



U.S. Department of Energy

National Energy Technology Laboratory



March 3, 2000

Request For Proposal (RFP) No. DE-RP26-00FT40780 for site security services for the US Department of Energy's National Energy Technology Laboratories located in Morgantown, West Virginia and Pittsburgh, Pennsylvania.

Prospective Offerors:

The purpose of this Executive Summary Letter is to highlight salient elements of the RFP. This letter is not an integral part of the RFP which is a self-contained document. In the event of any conflict between the contents of this Executive Summary Letter and that of the RFP, the RFP language will prevail.

The National Energy Technology Laboratory (NETL) is soliciting for offers to provide site security services. The Government requirements are detailed in the Statement of Work contained in Section J, Attachment A.

This solicitation is reserved for eligible firms in the Small Business Administration 8(a) program. The SIC code is 7381 with small business size standard of maximum average of not more than \$9 million gross revenue per year for the last three years.

Each offeror will be evaluated for the best value to the government, lowest price will not necessarily be the determinative factor. The Government will evaluate the offeror's past performance, length of experience, and capability to perform the current contract. Each offer will be objectively reviewed on its own merit against the evaluation criteria stated in the RFP using technical reviewers.

It is anticipated that a fixed-price contract will result from this solicitation and the sample contract provided herein is based on that contract type, however; the DOE reserves the right to negotiate and award the contract type deemed in its best interest. Proposals will be evaluated and negotiated in accordance with applicable DOE acquisition regulations.

The estimated period of performance of this contract is from the date of award through twenty four (24) months for the base contract. This period will be extended by up to two (2) additional periods -- one twenty-four (24) month period and one twelve (12) month period if options one and two are exercised by the government.

The Government anticipates providing facilities and property for accomplishing this effort. A preproposal site visit is scheduled for **March 22, 2000** at the Morgantown, West Virginia site and **March 23, 2000** at the Pittsburgh, Pennsylvania site to permit potential offerors an opportunity to visit the facilities (see Provision L.14). Costs associated with the site visits are at the sole expense of the offeror. In order to accommodate attendees, the preregistration must be submitted before close of business on **March 15, 2000**. Attendance is limited to two (2) attendees per offeror. The preregistration form, map, and general directions to the NETL sites are included in Section J.

Proposals must be submitted in accordance with the requirements of the RFP (See Section L). Offerors are also advised to give particular attention to the evaluation criteria identified in Part IV, Section M. Each of the

required proposal parts should be bound separately and clearly labeled. The proposals must be received by the Contract Specialist not later than 4:00 p.m. local prevailing time on **April 05, 2000**, at the address below:

U.S. Department of Energy
National Energy Technology Laboratory-Morgantown Site
ATTN: Kaye Bloniarz-Cook, Mailstop 107
3610 Collins Ferry Road
Morgantown, WV 26507-0880

Proposals must authorize a period for acceptance by the Government of not less than sixty (60) calendar days from the date specified for receipt of proposals. Further, you are cautioned that late proposals, modifications, and withdrawals will be treated in accordance with the article in Section L entitled "Instructions to Offerors - Competitive Acquisition."

All requests for explanation or interpretation of any part of the RFP shall be submitted in writing to the Contract Specialist at the aforementioned address. Your written questions must be received by the Contract Specialist prior to 12:00 noon on **March 27, 2000**. The Government reserves the right not to respond to questions submitted after this date, nor to respond to questions submitted by telephone or in person at any time. All amendments will be posted on the NETL Homepage at "<http://www.netl.doe.gov/business/solicit/>"; therefore, offerors are encouraged to periodically check the NETL Homepage to ascertain the status of any amendments as hard copies will not be distributed.

For your information, it is recommended that all prospective offerors download a copy of the DOE "Lobbying Brochure" (<http://www.pr.doe.gov/lobbying.html>) which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal contractors and recipients.

Please note that an automated document writing system has been used to prepare this document. Each provision in the data base has been assigned a number. Not all of the provisions in the data base have been used in this document; therefore, the numbering may not be continuous.

All communications concerning this RFP should cite the RFP number and be directed in writing to the attention of the Contract Specialist via mail at the letterhead address, via fax at (304) 285-4683, or via E-mail at kbloni@netl.doe.gov.

Sincerely,

Original Signed by Kaye Bloniarz-Cook
Contract Specialist
Acquisition and Assistance Division

Enclosure

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ►		RATING		PAGE OF 1 PAGES	
2. CONTRACT NO. TBD		3. SOLICITATION NO. DE-RP26-00FT40780		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED February 20, 2000	
7. ISSUED BY U. S. Department of Energy, National Energy Technology Laboratory P O Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507-0880 ATTN: Kaye Bloniarz-Cook				8. ADDRESS OFFER TO (If other than Item 7)			

NOTE: In sealed bid solicitations, "offer" and "offeror" mean "bid" and "bidder."

SOLICITATION

9. Sealed offers in original and 2 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in Morgantown, WV until 4:00pm local time April 5, 2000.
- (Hour) (Date)

CAUTION — LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ►		A. NAME Kaye Bloniarz-Cook		B. TELEPHONE NO. (NO COLLECT CALLS) AREA CODE 304 NUMBER 285-4827 EXT.		C. E-MAIL ADDRESS kbloni@netl.doe.gov	
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8) ►		10 CALENDAR DAYS %		20 CALENDAR DAYS %		30 CALENDAR DAYS %		CALENDAR DAYS %		
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offers and related documents numbered and dated:			AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	

15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)			
15B. TELEPHONE NUMBER			15C. CHECK IF REMITTANCE ADDRESS <input type="checkbox"/> IS DIFFERENT FROM ABOVE — ENTER SUCH ADDRESS IN SCHEDULE			17. SIGNATURE		18. OFFER DATE	
AREA CODE	NUMBER	EXT.							

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION				
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()								
24. ADMINISTERED BY (If other than Item 7) CODE				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ►				ITEM
26. NAME OF CONTRACTING OFFICER (Type or print)				25. PAYMENT WILL BE MADE BY CODE				
27. UNITED STATES OF AMERICA (Signature of Contracting Officer)				28. AWARD DATE				

IMPORTANT — Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ITEMS BEING ACQUIRED (BASE CONTRACT WITH OPTIONS) (MAR 1999)

The Contractor shall furnish all personnel, supervision, equipment, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the statement of work. Direct labor rate shall include base labor rate, fringe benefits, overhead, G&A, and profit applicable to the service performed under this contract.

BASE PERIOD

	Per Month	Total
1. Core site security services at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Attachment A, Paragraph 3.0, Statement of Work and Attachment E, Article VII)	\$ _____ x 24 mo.	\$ _____
2. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Morgantown, West Virginia		\$ <u>5,000</u>
3. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Section L of the solicitation and Attachment E, Articles VII and XXV)	\$ _____/hr.	
4. Core site security services at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Attachment A, Paragraph 3.0, Statement of Work and Attachment F, Article VII)	\$ _____ x 24 mo.	\$ _____
5. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania		\$ <u>5,000</u>
6. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Section L of the solicitation and Attachment F, Articles VII and XXV)	\$ _____/hr.	
7. Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist". (Not separately priced.)		
Total Base Period Price		\$ _____

NOTICE: NO WORK UNDER THIS CONTRACT SHALL BE AUTHORIZED BEYOND THE BASE CONTRACT WITHOUT THE SPECIFIC WRITTEN DIRECTION OF THE CONTRACTING OFFICER.

OPTION I

	Per Month	Total
1. Core site security services at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Attachment A, Paragraph 3.0, Statement of Work and Attachment E, Article VII)	\$ _____ x 24 mo.	\$ _____
2. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Morgantown, West Virginia		\$ <u>5,000</u>
3. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Section L of the solicitation and Attachment E, Articles VII and XXV)	\$ _____/hr.	
4. Core site security services at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Attachment A, Paragraph 3.0, Statement of Work and Attachment F, Article VII)	\$ _____ x 24 mo.	\$ _____
5. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania		\$ <u>5,000</u>
6. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Section L of the solicitation and Attachment F, Articles VII and XXV)	\$ _____/hr.	
7. Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist". (Not separately priced.)		
	Total Option I Price	\$ _____

OPTION II

	Per Month	Total
1. Core site security services at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Attachment A, Paragraph 3.0, Statement of Work and Attachment E, Article VII)	\$ _____ x 12 mo.	\$ _____
2. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Morgantown, West Virginia		\$ <u>5,000</u>
3. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Morgantown, West Virginia (see Section L of the solicitation and Attachment E, Articles VII and XXV)	\$ _____/hr.	
4. Core site security services at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Attachment A, Paragraph 3.0, Statement of Work and Attachment F, Article VII)	\$ _____ x 12 mo.	\$ _____
5. *Other direct costs (ODC) funding pool at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania		\$ <u>5,000</u>
6. **Loaded hourly rate for hours beyond core labor hours for site security at the National Energy Technology Laboratory located in Pittsburgh, Pennsylvania (see Section L of the solicitation and Attachment F, Articles VII and XXV)	\$ _____/hr.	
7. Reports as prescribed in accordance with Part III, Section J, Attachment B, "Reporting Requirements Checklist". (Not separately priced.)		

Total Option II Price \$ _____

* Access to funds set forth in this pool shall only occur with written preapproval of the proposed cost by the COR at the site and with the concurrence of the CO. These funds may be unilaterally adjusted by the Government on an as-needed basis. Examples of ODCs to be paid from this pool are unforeseen training, locksmith services, special events as directed by the Government, etc. (Costs reflected in Attachment A, Statement of Work, Paragraph 11.0 are considered direct costs for bidding purposes of this solicitation.)

** Hours beyond the core labor hours shall be billed at the loaded hourly rate(s) set forth in the contract and expressed in hours per labor category, per site. The loaded rate includes: labor rate, fringe benefits, overhead, general/administration, and profit applicable to the services performed under this contract.

B.2 OPTION(S) TO EXTEND THE TERM OF THE CONTRACT (NOV 1999)

- (a) The Government may unilaterally extend the term of this contract by written notice to the Contractor within the term of the contract; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises any option, the extended contract shall be considered to include this option provision.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months.

B.3 OPTION(S) TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to the existing collective bargaining agreement provided by the existing union. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months. The Contracting Officer may exercise this option by written notice to the Contractor within thirty (30) days. Primary application of this authority would occur if delays in awarding a successor contract at the scheduled completion of this award were apparent.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK (NOV 1997)

The Statement of Work is located in Part III -- Section J, Attachment A to this contract.

C.2 REPORTS (MAY 1998)

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B.

SECTION D - PACKAGING AND MARKING

D.1 PACKAGING (FEB 1999)

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by A (As required) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded A.

D.2 MARKING (JAN 1999)

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (1) Identifies the contract by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).

For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION (NOV 1997)

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

E.2 ACCEPTANCE (MAR 1999)

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer.

SECTION F - DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT (NOV 1997)

The term of this contract is twenty four (24) months after the effective date of this contract.

F.2 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S)) (SEPT 1999)

BASE CONTRACT

The work to be performed under the Base Contract (Reference Part I, Section B) shall commence on the effective date of the contract and shall continue for twenty four (24) months.

NOTE: The government may elect to exercise only Option I, both Options I and II, or no options at all.

OPTION I

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twenty four (24) months from the effective date of the exercised option.

OPTION II

If Option II is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twelve (12) months from the effective date of the exercised option.

F.3 PRINCIPAL PLACE OF PERFORMANCE (FEB 1998)

The principal place of performance under this contract shall be at the Department of Energy's National Energy Technology Laboratories located in Morgantown, West Virginia and Pittsburgh, Pennsylvania.

F.4 52.242-15 STOP-WORK ORDER. (AUG 1989) -- ALTERNATE I (APR 1984)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or Termination clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if -
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the

Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CORRESPONDENCE PROCEDURES (JAN 1999)

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Correspondence

All correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(b) Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AC26-00FT40780, and identifying the specific contract action requested.

G.2 SUBMISSION OF VOUCHERS/INVOICES (JUNE 1999)

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal), and the NETL Statement of Cost. The Statement of Cost shall be supported by the information contained in Paragraph C of this clause. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Statement of Cost

The SF 1034 shall be completed so as to make due allowances for the Contractor's cost accounting system. The costs claimed shall be only those recorded costs (including cost sharing) which are authorized for billing by the payment provisions of this contract. If this is a cost-plus-fixed-fee contract, the amount claimed for the fixed fee should be based on a percentage of completion of the work. If this is a cost sharing contract, the "Government Share" must agree with the amount billed on the SF 1034. Any cost sharing or in-kind contributions incurred by the Contractor and/or third party during the billing period must be included in the invoice and adequately supported. Indirect rates claimed shall be billed

in accordance with the "Allowable Cost and Payment Clause". The Certification (block 11) must be signed by a responsible official of the Contractor.

(c) Supporting Documentation

Other direct costs authorized for payment from the pool and claimed for reimbursement on the Statement of Cost must be adequately supported. The level of detail provided must clearly indicate on what date(s) and where the funds were expended. For example, support for labor costs must include the labor category (e.g. manager, senior guard, guard, etc.) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; and supplies should be categorized by the nature of the items (e.g. office, computer, etc.) and the dollar amount per category.

(d) Submission of Voucher

Submit one copy of the original voucher including the certified Statement of Cost and Supporting Documentation to the following payment office:

U. S. Department of Energy
Oak Ridge Financial Services Center
P. O. Box 4787
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including the certified Statement of Cost and Supporting Documentation to the following address:

U. S. Department of Energy
National Energy Technology Laboratory
ATTN: Accounts Payable
3610 Collins Ferry Road
P O Box 880
Morgantown, WV 26507-0880

(e) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers should be the same as covered by any required monthly technical progress reports and/or monthly cost reports.

(f) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(g) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR (JULY 1999)

A support service contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this contractor has access to your business confidential cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of any and all business confidential information of other contractors and financial assistance recipients to which they have access.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING (JAN 1999)

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

H.2 TECHNICAL DIRECTION (JUNE 1998)

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
 - (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or
 - (2) Advise the Contractor within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

H.3 MODIFICATION AUTHORITY (NOV 1997)

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or

- (c) modify any term or condition of this contract.

H.4 GOVERNMENT PROPERTY AND DATA (JAN 1999)

- (a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items.

- (b) Government-Furnished Property and Data

Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in the "List of Government-Furnished Property" (Part III -- Section J, Attachment D) to the contract, shall be furnished.

- (c) Reporting Requirements

The reports required shall be submitted in accordance with 48 CFR 945 and the reporting requirements set forth in Part III, Section J, Attachment B.

The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

H.5 MOVEMENT OF PROPERTY ON- OR OFF-SITE (APR 1984)

Prior written permission of the Contracting Officer is required before any Government-owned property, equipment, or materials are removed from, or before any non Government-owned property, equipment, or materials are brought onto the National Energy Technology Laboratory sites.

H.6 KEY PERSONNEL/PROGRAM MANAGER (MAR 1998)

The key personnel, which includes the Program Manager, specified below, are considered to be essential to the work being performed under this award; moreover, any changes to these personnel require prior DOE Contracting Officer's written approval.

The Program Manager shall serve as the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DOE Contracting Officer's Representative may issue within the terms and conditions of the contract.

The following is a list of key personnel that have been approved for this contract:

<u>Name</u>	<u>Title</u>
[TBD]	[TBD]

Prior to diverting any of the specified individuals, the Contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer, with concurrence of the Contracting Officer's Representative.

H.7 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUNE 1998)

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

H.8 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS (FEB 1998)

In performing work under this contract, the Contractor shall comply with all relevant federal, state, and local statutes, ordinances, laws, and regulations.

H.9 CONTRACTOR PRESS RELEASES (APR 1998)

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

H.10 PERMITS AND LICENSES (JAN 1999)

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

H.11 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION (JUNE 1998)

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local laws, including codes, ordinances and regulations, covering safety, health and environmental protection.

H.12 ENVIRONMENT, SAFETY, AND HEALTH -- NETL ON-SITE SERVICE CONTRACTS (OCT 1993)

- (a) The contractor shall include this environment, safety and health clause in all subcontracts requiring work at the site. However, such flow down of responsibility shall not relieve the contractor of its obligation to assure compliance with the provisions of this clause.
- (b) The contractor shall comply with requirements stated in 29 CFR Parts 1910 and 1926, and 40 CFR.
- (c) The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of his/her employees, NETL employees and the public, and to prevent damage to NETL-owned materials, supplies, equipment, facilities and any other NETL-owned property.
- (d) The contractor shall comply with the orders, regulations, and directives of the DOE and/or NETL included herein.
- (e) Accidents or incidents resulting in human injury and/or property damage are to be reported immediately to the Contracting Officer's Representative.

Notification, recording and reporting requirements for accidents and/or incidents shall be conducted in accordance with 29 CFR 1904 and 1910. The Contracting Officer's Representative shall be provided with copies of all OSHA-required documentation within ten days of the accident and/or incident.

- (f) Contractors shall maintain an accurate record of on-site hours worked and shall provide this information to the Contracting Officer's Representative upon request.

- (g) Contractor work at NETL shall be in accordance with the following safety requirements which are specific to the NETL site and are for the protection of both NETL and contractor personnel and equipment. The contractor shall be responsible for its employees' compliance with these requirements.
1. The contractor shall obtain permission from the Contracting Officer's Representative before commencing any on-site work.
 2. Contractor personnel shall wear their NETL-provided contractor's badges while on-site, and shall return them to security upon leaving NETL. This is required for accountability in the event of an emergency. These badges shall be displayed where they can be seen unless doing so presents a safety hazard.
 3. Contractor personnel shall comply with the site parking and traffic flow pattern. The speed limit for roadways is 15 miles per hour, except inside the second gate where the speed limit is 5 miles per hour.
 4. Contractor personnel shall remain in their work area or common areas of the Laboratory (parking area, roadways, and cafeteria). Unnecessary wandering about the Laboratory is not permitted.
 5. The contractor shall barricade and/or rope off all hazardous areas. When the area has been secured, a tag or sign signed by the contractor stating the reason for the barricade will be installed in a highly visible area. The contractor shall provide all materials necessary to secure the area.
 6. Contractor personnel shall wear personal protective clothing according to signs posted in the work area, and as required by OSHA for the hazards created by the work performed under this contract. Relief from the posted requirements may be obtained if the typical area hazards are suspended during contractor work, and if a NETL Special Work Permit is issued.
 7. The contractor shall not climb or walk on piping or pipe bridges, conduits, or vessels.
 8. No valves or electric disconnects shall be operated by the contractor. Any interruption of services shall be coordinated by the Contracting Officer's Representative at least calendar days before the planned interruption.
 9. Use of Government equipment, tools, and supplies or materials is expressly prohibited unless specifically authorized in the contract.
 10. Smoking on the NETL site is permitted in the designated areas only.
- (h) In the event of a disagreement between the Contracting Officer's Representative and the Contractor's Representative, concerning interpretation of the requirements of this clause, they shall meet with the Contracting Officer for resolution.

H.13 INCREMENTAL FUNDING

The contractor recognizes and agrees that upon contract award or the government's exercise of the contract option(s) specified in Article B.1, the government may not initially obligate all funds specified for the effort. In such circumstances, it is understood that the government will allot additional funds incrementally to the contract up to the total price specified for that period.

H.14 PARKING AREA (APR 1984)

Parking facilities for the Contractor's employees will be limited to the area adjacent to the portal of entry, designated by the Contracting Officer's Representative (COR).

H.15 LOBBYING RESTRICTION (DEPT. OF INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1999) (JUNE 1999)

The contractor or awardee agrees that none of the funds obligated on this award shall be made available for an activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal contractors can be found at [. \(http://www.pr.doe.gov/lobbying.html\)](http://www.pr.doe.gov/lobbying.html)

H.16 INSURANCE - MINIMUM REQUIREMENTS (APR 1984)

The contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract. Minimum requirements are as follows:

Worker's Compensation and Employer's Liability

Contractors are required to comply with applicable Federal and State worker's compensation and occupational disease statutes. If occupational diseases are not compensatable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required.

General Liability

Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

Automobile Liability

Automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

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SECTION I - CONTRACT CLAUSES

I.1 52.202-1 DEFINITIONS. (OCT 1995)

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means -
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that -
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for -
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services -
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means -
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

I.2 52.203-3 GRATUITIES. (APR 1984)

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -
 - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled -
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

- (a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

I.5 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

- (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
 - (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I.6 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may -
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which -
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either -
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.7 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be -
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) For cost-plus-award-fee contracts -
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may -
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or

adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I.8 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

I.9 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such

officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

- (1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

- (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
- (ii) Professional and technical services.
- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of -
 - (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the

advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes -
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

- (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

I.10 52.204-2 SECURITY REQUIREMENTS. (AUG 1996)

- (a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."
- (b) The Contractor shall comply with -
- (1) The Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DOD 5220.22-M); and
 - (2) Any revisions to that manual, notice of which has been furnished to the Contractor.
- (c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.
- (d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

I.11 52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER. (JUN 1996)

- (a) In accordance with Executive Order 12873, dated October 20, 1993, as amended by Executive Order 12995, dated March 25, 1996, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20 percent postconsumer material.
- (b) The 20 percent standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, and other uncoated printed and writing paper, such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative to meeting the 20 percent postconsumer material standard is 50 percent recovered material content of certain industrial by-products.

I.12 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

I.13 52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.14 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (JUN 1999)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to -
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;

- (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General -
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating -
- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -
- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and -
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

I.15 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT. (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.

- (e) The specifications.

I.16 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS. (OCT 1997)

- (a) Exceptions from cost or pricing data.

- (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

- (ii) Information on modifications of contracts or subcontracts for commercial items.

- (A) If--

- (1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and
 - (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

- (B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

- (1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

- (2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

- (3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

- (2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced

using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

- (b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:
 - (1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.
 - (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

I.17 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for -
 - (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

I.18 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.19 52.222-26 EQUAL OPPORTUNITY. (FEB 1999)

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

- (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to -
- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

I.20 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (APR 1998)

- (a) Definitions. As used in this clause -

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who -

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

- (b) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as -
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) *Listing openings.*
 - (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.
 - (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all openings with the appropriate office of the State employment service.
 - (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
 - (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.
- (e) *Postings.*
 - (1) The Contractor agrees to post employment notices stating -
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.
- (f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (g) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.21 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (JUN 1998)

(a) *General.*

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as:
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.*

- (1) The Contractor agrees to post employment notices stating:
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

- (c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

I.22 52.222-3 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. (JAN 1999)

- (a) The contractor shall report at least annually, as required by the Secretary of Labor, on:
 - (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
 - (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
 - (2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

I.23 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (MAY 1989)

- (a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised.

It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.
- (c) Compensation.
 - (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
 - (2)
 - (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
 - (ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.
 - (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
 - (iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

- (B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.
- (C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
- (v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
- (vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in

wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) Records.
 - (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - (i) For each employee subject to the Act -
 - (A) Name and address and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

- (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
 - (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.
 - (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) Withholding of payments and termination of contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

- (o) Rulings and interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's certification.
 - (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
 - (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
 - (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
 - (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the

minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision -

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.24 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractors actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
 - (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
 - (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

I.25 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989)

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with -
 - (1) An increased or decreased wage determination applied to this contract by operation of law; or
 - (2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

I.26 52.222-47 SCA MINIMUM WAGES AND FRINGE BENEFITS APPLICABLE TO SUCCESSOR CONTRACT PURSUANT TO PREDECESSOR CONTRACTOR COLLECTIVE BARGAINING AGREEMENTS (CBA). (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor (K-Ray Security, Inc.) and the

International United Plant Guard Workers of America (UPGWA). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

I.27 52.222-50 NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 1999)

- (a) Definition. "Service employee," as used in this clause, means any person engaged in the performance of recurring building services other than a person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541, and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor and such person.
- (b) Consistent with the efficient performance of this contract, the Contractor shall, except as otherwise provided herein, in good faith offer those employees engaged in the performance of building services (other than managerial and supervisory employees) under the predecessor contract, whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal to employment under the contract in positions for which the employees are qualified. The Contractor shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor contractor employed in connection with performance of the work. Where the Contractor offers a right of first refusal to fewer employees than were employed by the predecessor contractor, its obligation under the contract to the predecessors employees to fill vacancies created by increased staffing levels or by employee termination, either voluntarily or for cause, continues for 3 months after commencement of the contract. Except as provided in paragraph (c) of this clause, the Contractor shall not offer employment under the contract to any person prior to having complied fully with this obligation.
- (c) Notwithstanding the Contractor's obligation under paragraph (b) of this clause, the Contractor --
 - (1) May employ on the contract any employee who has worked for the Contractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face layoff or discharge;
 - (2) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees; and
 - (3) Is not required to offer a right of first refusal to any employee(s) of the predecessor contractor who the Contractor reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.8).
 - (4) Must presume, unless demonstrated otherwise, that all employees working on the predecessor contract in the last month of performance performed suitable work on the contract. Offers of employment are governed by the following:
 - (i) The offer shall state the time within which the employee must accept such offer, but in no case shall the period for acceptance be less than 10 days.
 - (ii) The offer may be made by separate written notice to each employee, or orally at a meeting attended by a group of the predecessor contractor's employees.
 - (iii) An offer need not be to a position similar to that which the employee previously held, but the employee must be qualified for the position.

- (iv) An offer to a position providing lower pay or benefits than the employee held with the predecessor contractor will be considered bona fide if the Contractor shows valid business reasons.
- (v) To ensure that an offer is effectively communicated, the Contractor should take reasonable efforts to make the offer in a language that each worker understands; for example, by having a coworker or other person fluent in the worker's language at the meeting to translate or otherwise assist an employee who is not fluent in English.
- (d) For a period of 1 year, the Contractor shall maintain copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the predecessors employees to whom an offer was made. Copies of such documentation shall be provided upon request to any authorized representative of the contracting agency or the Department of Labor.
- (e) The Contractor shall, no less than 60 days before completion of this contract, furnish the Contracting Officer with a certified list of the names of all service employees engaged in the performance of building services, working for the Contractor at the Federal facility at the time the list is submitted. The list also shall contain anniversary dates of employment on the contract either with the current or predecessor contractors of each service employee, as appropriate. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided upon request to employees or their representatives. Submission of this list will satisfy the requirements of paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as Amended.
- (f) The requirements of this clause do not apply to services where a majority of the Contractors employees performing the particular services under the contract work at the public building and at other locations under contracts not subject to Executive Order 12933, provided that the employees are not deployed in a manner that is designed to avoid the purposes of the Executive Order.
- (g) If it is determined, pursuant to regulations issued by the Secretary of Labor, that the Contractor is not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor, as provided in Executive Order 12933, the regulations of the Secretary of Labor at 29 CFR Part 9, and relevant orders of the Secretary of Labor, or as otherwise provided by law.
- (h) The Contractor is advised that the Contracting Officer shall withhold or cause to be withheld from the Contractor, under this or any other Government contract with the Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator of the Wage and Hour Division, the Administrative Law Judge, or the Administrative Review Board, that the Contractor failed to comply with the terms of this clause, and that wages lost as a result of the violations are due to employees or that other monetary relief is appropriate.
- (i) The Contractor shall cooperate in any investigation by the contracting agency or the Department of Labor into possible violations of the provisions of this clause and shall make records requested by such official(s) available for inspection, copying, or transcription upon request.
- (j) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 9. Disputes concerning the requirements of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the employees under the contract or its predecessor contract.

I.28 52.223-2 CLEAN AIR AND WATER. (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means -

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;
- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with -

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees -

- (1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and
- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

I.29 52.223-6 DRUG-FREE WORKPLACE. (JAN 1997)

(a) Definitions. As used in this clause -

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration -

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about -
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.
- (c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

I.30 952.224-70 PAPERWORK REDUCTION ACT. (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

I.31 52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (AUG 1998)

- (a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States by Executive order or regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, North Korea, and Sudan.
- (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.
- (c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

I.32 52.228-5 INSURANCE -- WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective--
 - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

I.33 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to -

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

I.34 52.232-17 INTEREST. (JUN 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

I.35 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I.36 52.232-25 PROMPT PAYMENT. (JUN 1997)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

- (a) Invoice payments -
 - (1) Due date.
 - (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
 - (A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).
 - (B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
 - (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.
 - (2) Certain food products and other payments.
 - (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are -
 - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181,

including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

- (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
 - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
 - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
- (ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
- (3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.
- (i) Name and address of the Contractor.
 - (ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)
 - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
 - (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

- (viii) Any other information or documentation required by the contract (such as evidence of shipment).
 - (ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.
- (4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.
- (i) A proper invoice was received by the designated billing office.
 - (ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.
- (5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
 - (ii) The following periods of time will not be included in the determination of an interest penalty:
 - (A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish;

5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

- (B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.
- (C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.
- (iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.
- (iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.
- (6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.
- (7) Additional interest penalty.
 - (i) A penalty amount, calculated in accordance with subdivision (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor -
 - (A) Is owed an interest penalty of \$1 or more;
 - (B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
 - (C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.
 - (ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall -
 - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
 - (3) State that payment of the principal has been received, including the date of receipt.
 - (B) Demands must be postmarked on or before the 40th day after payment was made, except that -
 - (1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or
 - (2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except -

- (1) The additional penalty shall not exceed \$5,000;
- (2) The additional penalty shall never be less than \$25; and
- (3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments -

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

I.37 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER -- CENTRAL CONTRACTOR REGISTRATION. (MAY 1999)

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).
- (b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.
- (c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.
- (d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.
- (f) Liability for uncompleted or erroneous transfers.
 - (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.
 - (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such

assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

- (i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

I.38 52.233-1 DISPUTES. (OCT 1995) -- ALTERNATE I (DEC 1991)

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)
 - (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
 - (2)
 - (i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -
 - (A) Exceeding \$100,000; or
 - (B) Regardless of the amount claimed, when using -
 - (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
 - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.39 52.233-3 PROTEST AFTER AWARD. (AUG 1996) -- ALTERNATE I (JUN 1985)

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment

in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.40 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

I.41 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to--
- (1) Furnish phase-in training; and
 - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall

disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.42 52.242-13 BANKRUPTCY. (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.43 52.243-1 CHANGES--FIXED PRICE (AUG 1987) Alternate I (Apr 1984).

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I.44 52.244-2 SUBCONTRACTS. (AUG 1998) -- ALTERNATE II (AUG 1998)

- (a) Definitions. As used in this clause:

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent" to subcontract means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.
- (d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that:
 - (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
 - (2) Is fixed-price and exceeds:
 - (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
 - (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.
- (e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: []
- (f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:
 - (i) A description of the supplies or services to be subcontracted.
 - (ii) Identification of the type of subcontract to be used.
 - (iii) Identification of the proposed subcontractor.
 - (iv) The proposed subcontract price.
 - (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
 - (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
 - (vii) A negotiation memorandum reflecting:
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

- (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any:
- (i) cost-plus-fixed-fee subcontract, or
 - (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.
- (g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination:
- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
- (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
- (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [TBD]

I.45 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS. (OCT 1998)

- (a) Definitions.
- "Commercial item," as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.
- "Subcontract," as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be

required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
 - (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and
 - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.46 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.*

- (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.
- (3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.
- (4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.*

- (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) of this clause; or
 - (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.*

- (1) The Government shall retain title to all Government-furnished property.
- (2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--
 - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
 - (ii) Title to all other material shall pass to and vest in the Government upon--
 - (A) Issuance of the material for use in contract performance;
 - (B) Commencement of processing of the material or its use in contract performance; or
 - (C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.*

- (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.
- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
- (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.*

- (1) The term "Contractor's managerial personnel," as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--
 - (i) All or substantially all of the Contractor's business;
 - (ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing this contract.
- (2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraphs (3) and (4) below.
- (3) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--
 - (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Contractor is otherwise responsible under the express terms of this contract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
 - (v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (4)
 - (i) If the Contractor fails to act as provided in subdivision (g)(3)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
 - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--
 - (A) Did not result from the Contractor's failure to maintain an approved program or system;
or
 - (B) Occurred while an approved program or system was maintained by the Contractor.
- (5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

- (6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--
 - (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
 - (7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making such equitable adjustment.
 - (8) The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.
 - (9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property, or shall otherwise credit the proceeds to equitably reimburse the Government, as directed by the Contracting Officer.
 - (10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- (h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--
- (1) Any delay in delivery of Government-furnished property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of Government-furnished property; or
 - (4) Failure to repair or replace Government property for which the Government is responsible.

- (i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.
- (j) *Abandonment and restoration of Contractor's premises.* Unless otherwise provided herein, the Government--
 - (1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) *Communications.* All communications under this clause shall be in writing.
- (l) *Overseas contracts.* If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

I.47 52.246-25 LIMITATION OF LIABILITY--SERVICES. (FEB 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that--
 - (1) Occurs after Government acceptance of services performed under this contract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

I.48 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SEP 1996)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Contracting Officer, transfer title and deliver to the Government--
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and

remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:
 - (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of--
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and
 - (iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including--
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
 - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (m)
 - (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

I.49 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICES) (APR 1984)

- (a)
 - (1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).
- (2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- (b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.
- (f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- (h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

I.50 52.249-14 EXCUSABLE DELAYS. (APR 1984)

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

I.51 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

SECTION J - LIST OF ATTACHMENTS

ATTACHMENT	DESCRIPTION	PAGES
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Statement of Work Site Security Services for the National Energy Technology Laboratory

1.0 SCOPE OF WORK

The Contractor shall provide physical security services for the U.S. Department of Energy, National Energy Technology Laboratory (NETL), Pittsburgh, Pennsylvania and Morgantown, West Virginia. Physical security shall be provided 24 hours per day, year round. The Contractor shall provide all personnel, supervision, equipment, supplies, uniforms, and accessories as necessary to perform the Security Services as defined in this Work Statement (WS), except otherwise specified in the contract. In performing the work specified in this contract, the Contractor shall provide competent, trained, uniformed security officers and uniformed security supervisory personnel.

2.0 APPLICABLE CODES AND REQUIREMENTS

Services provided shall comply with, but not be limited to the following regulations, requirements, and procedures:

- 2.1 DOE Orders Concerning Safeguards and Security
- 2.2 Federal Property Management Regulations
- 2.3 NETL Emergency Response Program
- 2.4 NETL Safety Procedures.

3.0 DESCRIPTION OF SERVICES

The Contractor shall provide a minimum of 832 (416 hours per site) man-hours of security services per week. A minimum of two security personnel shall be assigned to every workshift unless directed otherwise by the NETL. Hours of duty for the shifts are defined in Section 8.0.

The Contractor will assure the Government that each of its assigned personnel will comply with the following:

- 3.1 Provide security, as defined by the Government, for its customers, visitors, employees, and vendors.
- 3.2 Respond to all alarm conditions and enforce all access control procedures through the identification of personnel and control of entry and exits to NETL facilities.
- 3.3 Enforce control over removal of Government property, documents, or vital equipment as identified by the NETL.
- 3.4 Immediately report to authorized DOE Security staff and offsite agencies when required incidents involving persons observed attempting to gain or gaining unauthorized access to any of the NETL facilities.
- 3.5 Respond to suspicious incidents and take reports. When necessary and deemed appropriate, follow incidents to their conclusion.
- 3.6 Cooperate with and assist law enforcement agencies in connection with crimes committed against NETL, including maintaining the scene to protect possible evidence in accordance with established procedures.
- 3.7 Respond to and provide assistance in security-and/or safety-related situations, demonstrating common sense and good judgement and in compliance with NETL's policies and procedures.
- 3.8 Assume additional responsibilities, though not specifically specified in the WS, may be set forth in special orders, manuals, and procedures issued by the Government.

- 3.9 Maintain training and certification of those items, skills, concepts and other requirements as outlined in the contract.
- 3.10 Maintain knowledge of appropriate Federal, state, and local statutes and ordinances, and regulatory requirements, and periodic updates provided by the Government.

4.0 DESCRIPTIONS OF TASKS

Tasks to be performed by the Contractor include, but may not be limited to, the following:

- 4.1 Guard property against theft, sabotage, and trespassing.
- 4.2 Conduct routine and random patrols throughout the NETL sites.
- 4.3 Monitor the NETL Fire Protection System to ensure that, in the event of a fire, access by the fire department is not restricted.
- 4.4 Conduct perimeter patrol by inspecting the entire perimeter fence at least monthly and submit work orders through NETL's work control system to have the fence repaired. Routes shall be varied in order not to establish a set pattern.
- 4.5 Report security deficiencies and incidents and prepare a weekly highlights report. This report shall be provided to the Site Security Manager within 2 working days after the end of the week being reported.
- 4.6 Guard and protect all Government information, documentation, material, buildings, and equipment from unauthorized access, theft, or sabotage.
- 4.7 Detect all trespassers or persons who gain or attempt unauthorized access to the Laboratory by monitoring the Closed Circuit Television System in the Security Control Center and conduct random patrols throughout the site.
- 4.8 Provide traffic, parking and pedestrian control services. The Contractor shall direct traffic and issue parking tickets as required by NETL. Tactful and courteous warnings or citations shall be made using the NETL provided forms to individuals who violate site parking regulations. Abandoned vehicles shall be reported promptly in accordance with site requirements.
- 4.9 Investigate all losses and thefts of Government and personal property and report them to the Site Security Manager as required by NETL Procedure, Loss/Theft Reporting, Investigation, and Follow-up.
- 4.10 Conduct random searches of vehicles and hand-carried items to ensure that prohibited articles are not introduced onto the site or government property improperly removed from the site.
- 4.11 Enforce personnel identification procedures as prescribed by NETL directives and policies.
- 4.12 Lock and unlock designated buildings, gates, and spaces on a predetermined schedule, and open buildings or spaces for authorized personnel.
- 4.13 Monitor security alarms, intrusion detection systems, and other protection devices or equipment.
- 4.14 Monitor building conditions, turn lights and equipment off when not in use after non-duty hours, and report any unusual occurrences.
- 4.15 Maintain a log of all incidents, violations, patrol observations, problems, etc. If conditions warrant emergency action, a complete report of the incident shall be submitted to the Site Security Manager.
- 4.16 Provide employee badging services, which includes photographing employees for identification badges.
- 4.17 Maintain, issue, and retrieve identification badges, keys, access cards, and vehicle parking tags, and other security related items.
- 4.18 Maintain the master keying system and records for NETL. Implement or coordinate the repair and/or replacement of locks, locksets, and door hardware and re-key locks. Install and/or coordinate the installation of new locks and locksets. Perform and/or coordinate maintenance activities and change combination-type safe locks, and maintain a supply of locksets and hardware for immediate replacement needs. Provide locksmith services by a licensed, bonded locksmith. Maintain spare parts and keys.
- 4.19 Raise and lower the United States, and Departmental flags at the request of DOE, and when necessary to replace tattered and torn flags.
- 4.20 Monitor weather conditions and notify designated personnel for snow removal.

- 4.21 When emergency situations arise that may require immediate attention, the Contractor shall divert his uniformed personnel from their normal assigned duties to meet these conditions, as directed by designated site Emergency Preparedness Officials or Site Security Manager. Personnel will provide for notifications of onsite personnel and offsite emergency organizations, monitor emergency communications, control personnel and vehicle access to emergency scene and perform other duties as required. When the personnel diverted are no longer needed for the special work assignment, they shall be directed to return to their normal assignment. No additional costs, other than overtime costs, will be charged to the government for the diversion of security personnel to meet special work assignments. Under these conditions the Contractor shall not be penalized for, nor subject to deductions applied against scheduled work, except for failure to backfill personnel within the prescribed time.
- 4.22 Receive official mail, messages, packages, and telegrams during non-duty hours.

5.0 STANDARDS OF CONDUCT

The Contractor shall maintain satisfactory standards of employee competency, conduct, appearance, and integrity, and for taking such disciplinary action against his/her employees as may be necessary. The Contractor shall ensure that each employee prior to entry on duty is made fully aware of established standards.

Employees assigned to this contract will have personal contact with customers, employees, visitors, and vendors of the NETL. It is expected that the security personnel shall meet high standards of appearance and demeanor.

- 5.1 Appearance. The Government requires a favorable image and considers it to be a major asset of a protective force. Therefore, the Contractor shall ensure that Security personnel are at all times neatly groomed, and adhere to the requirements specified by the NETL.
- 5.2 Neglect of Duties shall not be condoned. This includes sleeping on duty, unreasonable delays or failures to carry out assigned tasks, conducting personal affairs during duty hours, and refusing to render assistance or cooperate in upholding the integrity of the security at the site.
- 5.3 Disorderly Conduct, use of abusive or offensive language, quarreling, intimidation by words, actions, or fighting shall not be condoned. Also included is participation in disruptive activities which interfere with normal and efficient Government operations.
- 5.4 Intoxicants. The Contractor shall not allow any employee (while on duty) to possess, sell, consume, or be under the influence of intoxicants, drugs, or substances which produce similar effects.
- 5.5 Criminal Actions. Contractor employees may be subject to criminal actions as allowed by law in certain circumstances.

6.0 CONTRACTOR PERSONNEL

- 6.1 Contract Managers. The Contractor shall provide Contract Managers at each site to serve as Security Supervisors and be responsible for the performance of work. These individuals shall have full authority to act for the Contractor on all contract matters relating to daily operation of this contract. The names of these personnel and alternates who shall act for the Contractor when the Supervisor is absent, shall be designated in writing to the contracting officer. The Contract Managers shall have at least 3 years of supervisory/management experience in the law enforcement field to manage security personnel and ascertain that the contract requirements are fulfilled.

The Security Supervisor or alternate shall be available during normal duty hours within 30 minutes to meet with NETL Security or other designated personnel to discuss security problems or security program related matters. After normal duty hours the Supervisor or his/her designee shall be available within 1 hour, 24 hours a day, 7 days a week.

- 6.2 Contractor Employees. The Contractor shall not employ persons for work on this contract if such employee is identified to the Contractor by the Contracting Officer as a potential threat to the health, safety, security, general well-being or operational mission of the installations and its population.

The Contractor shall ensure that all employees maintain high standards of conduct, appearance, competency, and integrity. All guard personnel shall wear the prescribed uniform and accessory equipment while on duty.

The Contractor shall ensure employees have a current and valid driver's license for the state of Pennsylvania or West Virginia before allowing the employee to operate a Government-owned vehicle at the NETL facility he/she is assigned.

7.0 STANDARDS OF QUALIFICATION

All Contractor personnel assigned to this contract will:

- 7.1 Possess proof of having met the requirements from the State of Pennsylvania (ACT 235) for Private Security Guards. (PGH ONLY)
- 7.2 Possess a high school diploma, GED, or equivalent training or job experience.
- 7.3 Demonstrate the ability to read and write in English equivalent to a high school graduate. Have the ability to verbally communicate in English; particularly in emergency situations requiring clear and definitive articulation to assure confidence, control and safety of those involved.
- 7.4 Possess CPR and First-Aid certification as set forth by the American Red Cross or Equivalent association.
- 7.5 Receive initial and refresher training as described in the contract.
- 7.6 Physical Qualification. Pass a physical examination provided by Government authorized licensed physician prior to assignment and biannually thereafter. Security personnel, to be medically qualified for the position must possess mental, sensorial, and motor skills consistent with assigned duties. Each employee, as a condition of employment, must submit to a placement examination, periodic comprehensive examinations, return to work examinations, and termination of employment examination. The Contractor will also be provided the hepatitis series for each employee as required by the OSHA Bloodborne Pathogens regulation.
- 7.7 Participate in annual safety, security, and emergency preparedness training.
- 7.8 Pass a comprehensive pre-employment background/reference check. When background or reference checks have been completed for employees while employed by a Contractor who is subsequently replaced by another contractor, the new Contractor is not required to conduct the pre-employment check for the carry-over employees unless requested by the NETL.
- 7.9 Entry Level Performance Objectives (an officer's first 90 days of employment). Ability to demonstrate a working knowledge, via testing, on-site observation by their supervisor and actual performance, of the following:
 - 7.9.1 Emergency response policies, plans, and procedures, including evacuation plans, emergency response organization notification, emergency scene control, etc.
 - 7.9.2 All systems, checkpoints, and conditions of normalcy associated with roving patrols.
 - 7.9.3 All procedures and practices involving pedestrian and vehicle control, protection of property, visitor control, badge systems, etc.
 - 7.9.4 The responsibilities associated with after-hour security operations.
 - 7.9.5 The duties and responsibilities as outlined in their job description.
 - 7.9.6 Submit written reports which are grammatically correct and able to be presented for management review.

7.10 Permanent Security Officer (those with more than six months assignment) shall demonstrate, via testing, on-site observation by their supervisor, and actual performance, the ability to:

- 7.10.1 Respond to and control emergency situations, as defined within the scope of their responsibility.
- 7.10.2 Guide new hires in the performance of their duties to assure job responsibilities in accordance with stated objectives/instructions.
- 7.10.3 Perform in accordance with the objectives as set forth for all entry-level security officers, including adherence to the duties and responsibilities as defined by the established job description.

7.11 Contract Manager/Security Supervisor shall demonstrate via testing, on-site observation and actual performance, the following:

- 7.11.1 The ability to meet each of the performance objectives as outlined for both Entry-Level and Permanent Security Officer stated above.
- 7.11.2 The ability to train and serve as positive role models for entry-level and permanent security officers in meeting the requirements of this assignment.
- 7.11.3 The ability to insure compliance with the rules, regulations, duties and responsibilities by each subordinate officer assigned to this contract.
- 7.11.4 The ability to perform orientation and training of new and experienced officers assigned to the contract.
- 7.11.5 The ability to provide assistance and guidance to all officers on matters of policy and operating procedures and personnel matters.
- 7.11.6 Scheduling personnel to meet post assignments under normal and emergency conditions.

8.0 HOURS OF OPERATION

The normal hours of operation at NETL are 8:00 a.m. until 4:30 p.m. The following are the standard shifts:

PITTSBURGH

Morning Shift:	11:00 p.m. through 07:00 a.m.
Day Shift:	07:00 a.m. through 03:00 p.m.
Evening Shift:	03:00 p.m. through 11:00 p.m.

MORGANTOWN

Morning Shift:	12:00 a.m. through 08:00 a.m.
Day Shift:	08:00 a.m. through 04:00 p.m.
Evening Shift:	04:00 p.m. through 12:00 p.m.

Additional shift alternatives will be acceptable to provide shift overlap when necessary.

9.0 OPERATING PROCEDURES

The Contractor shall prepare and maintain a Security Procedures Manual which clearly outlines all internal and external policies and procedures. This manual must be updated in the event of policy or procedural changes. All guards are responsible for familiarizing themselves with the contents of the manual.

10.0 GOVERNMENT-FURNISHED ITEMS

- 10.1 Office space for use as the Security Control Center.
- 10.2 Office furniture and office equipment as necessary for performance of required duties.
- 10.3 Electrical and mechanical protective equipment such as alarms, surveillance cameras, monitors, and stationary/portable communications equipment.
- 10.4 Necessary equipment for generating identification badges.
- 10.5 Government vehicles will be provided to conduct site patrols and other official business, as directed by NETL.
- 10.6 Security shields and patches indicating the government agency shall be provided by the NETL.
- 10.7 Safety shoes shall be provided by the NETL. Style and type will be determined by the agency. The color of the shoes will match the color of leather equipment and accessories. Rubber overshoes may be worn as necessary during inclement weather.
- 10.8 All Contractor employees shall receive the following government-provided training within six months of beginning assignment at NETL and as a refresher on an annual basis. Training will include, but not be limited to:
 - 1. Hazardous Communications Introduction
 - 2. Confined Space Entry
 - 3. Electrical Safety & Lockout/Tagout
 - 4. Hearing Conservation
 - 5. Bloodborne Pathogens
 - 6. Waste Management/Hazwaste Overview
 - 7. ES&H Awareness Training
 - 8. Chemical Hygiene Training
 - 9. Fire Extinguisher Training
 - 10. HAZWOPER Awareness Level
 - 11. First-Aid and CPR

This list will vary depending on requirements. Annual refresher courses on selected subjects will be completed through computer-Based training.

11.0 CONTRACTOR-FURNISHED ITEMS

The Contractor shall furnish, install, operate, and maintain in an acceptable manner all other equipment, materials, and supplies that are not specified as furnished by the Government but are required by the Contractor for performance under this contract. This includes, but is not limited to the following:

- 11.1 Uniforms. All security officers and security supervisory personnel shall wear the color and style of uniforms approved by the NETL Site Security Manager at the specific site location. Uniforms shall be worn at all times while on duty. The patch and shield shall be worn on the uniform of each Contractor employee in the same location on each uniform. The uniform shall include coordinated

shirt, tie, trousers, jacket/coat, hat, etc. The Contractor shall provide a minimum of five short-sleeved shirts and five long sleeved shirts, a minimum of three pairs of pants, and a minimum of one coat, one jacket, one hat, one tie for each Contractor employee. Shirts and pants will be replaced on a 18-month basis. Other items will be replaced/repared on an as needed basis.

- 11.2 Uniform Accessories and Equipment. Uniform accessories and equipment shall include a double key holder, and a three-cell flashlight with holder. All security officers and security supervisors shall wear the accessories and equipment approved by the NETL Site Security Manager at the specific site location.
- 11.3 Personal Equipment. Personal equipment may include whistles, foul weather clothing, and safety equipment (reflective vests, signal wands, etc.) necessary for full performance in all types of weather.
- 11.5 Bonding. The Contractor shall provide a minimum \$50,000 security bond for each employee. Certificates for each employee shall be provided to the COR. (MGN ONLY)
- 11.6 Training. All Contractor employees shall receive a minimum of 35 hours training their first year including the following within six months of beginning assignment at NETL:
 - 1. Basic Security, General Security & Control Tactics
 - 2. Professional Public Relations
 - 3. Asset Protection
 - 4. Legal Aspects & Defensive Procedures
 - 5. Report Writing, Investigations & Recordkeeping
 - 6. Communications
 - 7. Methods of Patrol and Patrol Techniques
 - 8. Response to Civil Disturbance and Public Disorder
 - 9. Use of Force, Crime in Progress, First Responder & Crime Scene Defense
 - 10. Search, Seizure, Detention/Apprehension of Subject and Arrest Procedures
 - 11. Bomb Recognition (Using visual and physical search) IED/Bomb Threats & Searches

Refresher training courses will be conducted annually. Each probationary security officer and Supervisor shall be required to successfully complete at least 40 hours of on-the-job training, rotating on each shift, prior to beginning assignment at NETL.

Certification of each employee's completion of all required training courses shall be maintained on file by the Contractor. Training shall be provided by persons who are qualified to instruct the specific subject.

If the Contracting Officer determines Contractor employees do not possess required training/ certification, the Contracting Officer will direct the Contractor to immediately remove such employees from duty and provide qualified replacements at no additional costs the Government.

In addition to this training, monthly meetings shall be held by the Security Supervisor to address miscellaneous issues, conduct training, and answer officer's inquiries.

12.0 SAFETY AND HEALTH REQUIREMENTS

The Contractor shall implement the principles and processes of Integrated Safety Management (ISM), as outlined in DOE P 450.4, Safety Management Policy, October 15, 1996, and Integrated Safety Management System Guide, DOE G450.4-1, Volumes 1 and 2, November 26, 1997, into the planning, budgeting, managing, executing, and assessing of all work activities. The ISM's five step process involves: defining the scope of work; analyzing the hazards; developing and implementing controls; performing work safely, and ensuring performance, into its everyday work activities. The ISM's seven guiding principles are: workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization. In order for cost-effective performance and to minimize differing and inconsistent requirements at the NETL, the Contractor's integration shall be consistent with NETL's own ISM and ES&H programs. The Contractor shall also provide resources for participation in the NETL's emergency preparedness and response program.

MUST BE SUBMITTED BEFORE CLOSE OF BUSINESS
March 15, 2000

NATIONAL ENERGY TECHNOLOGY LABORATORY

PRESOLICITATION SITE VISIT

REGISTRATION FORM

DATE: _____

PLEASE PRINT

NAME: _____

COMPANY: _____

ADDRESS: _____

CITY, STATE: _____ ZIP: _____

PHONE: _____ FAX: _____

E-MAIL: _____

Please return this form to:

MAIL TO: U.S. Department of Energy
NATIONAL ENERGY TECHNOLOGY LABORATORY
ATTN.: Kaye Bloniarz-Cook, Mailstop I07
3610 Collins Ferry Road
P. O. Box 880
Morgantown, WV 26507-0880

VIA FACSIMILE: (304) 285-4683

VIA E-MAIL: kbloni@netl.doe.gov

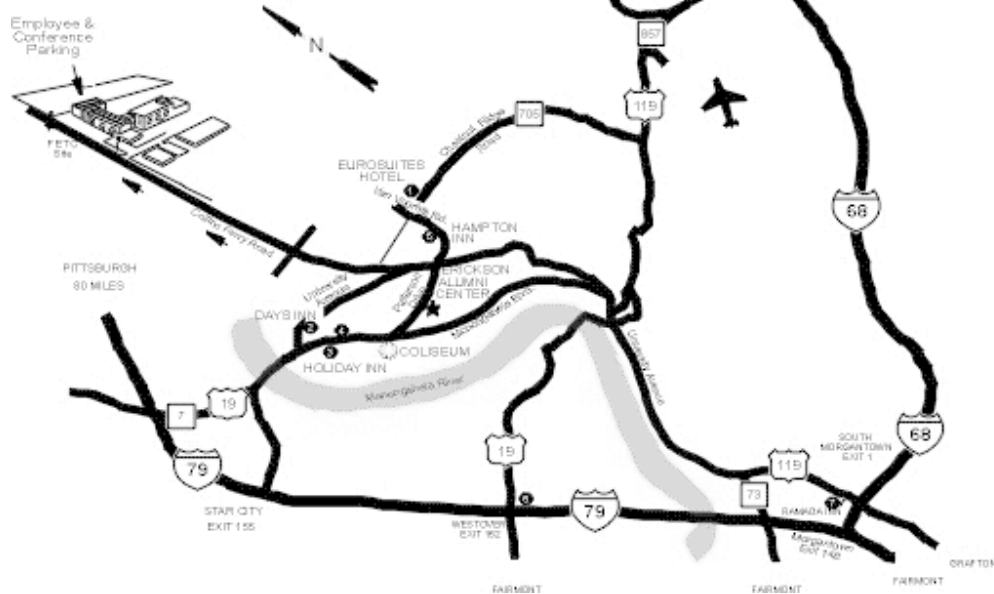
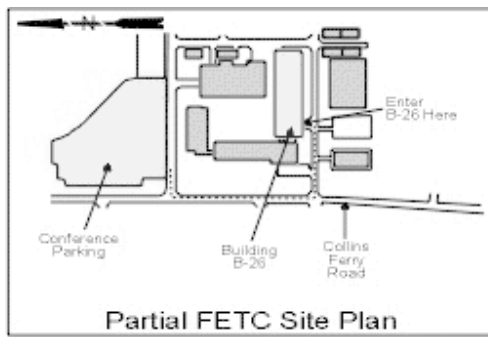


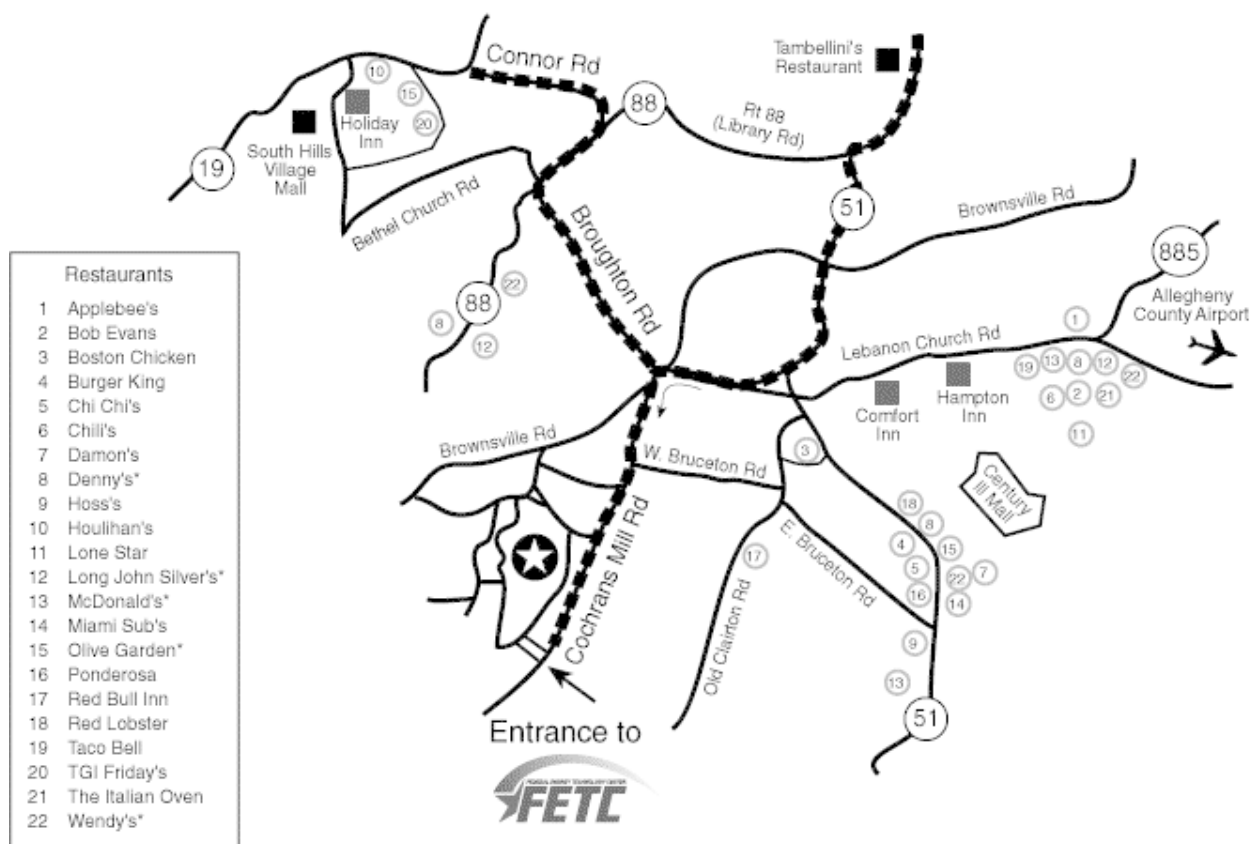
Exhibit III

From I-68, exit onto the Pierpont Rd. (Exit 7). Follow Rt. 857 to U.S. 119 South and turn onto Rt. 705 West. Follow 705 to the University and Patteson Drive intersection. Turn right and follow University Ave. onto Collins Ferry Rd.

From I-79, exit at the Star City Interchange (Exit 155). Bear right onto Rt. 7 and turn left onto Patteson Drive. (WVU Coliseum will be on your right) Go to University Ave. & Patteson Dr. intersection, turn left and follow University Ave. onto Collins Ferry Rd.

- | | |
|---|---|
| 1. Euro Suites 1-800-678-4837
510 Chestnut Ridge Rd. (304) 598-1000
Morgantown, WV 26505
Fax (304) 599-2736
Single \$69.00/Double \$79.00 | 1400 Saratoga Ave. (304) 599-1680
Morgantown, WV 26505
Fax (304) 598-0989
\$42.00 |
| 2. Hampton Inn 1-800-HAMPTON
1053 Van Voorhis Rd. (304) 599-1200
Morgantown, WV 26505
\$52.00 | 6. Ramada Inn 1-800-834-9766
Rt. 119 South & US 68 (304) 296-3431
Morgantown, WV 26505
\$45.37 |
| 3. Days Inn 1-800-329-7466
366 Boyers Ave. (304) 598-2120
Morgantown WV, 26505 | 7. Econo Lodge 1-800-553-2666
3506 Monongahela Blvd. (304) 599-8181
Morgantown, WV 26505
\$59.00 |
| 4. Econo-Lodge 1-800-55-ECONO
15 Commerce Dr. (304) 296-8774
Morgantown, WV 26505
Single \$44.52/Double \$52.32 | 8. Lakeview Resort 1-800-624-8300
US 68 & Route 857 (304) 594-1111
Morgantown, WV 26505
Fax (304) 594-9472 |
| 5. Holiday Inn 1-800-465-4329 | |

U.S. DEPARTMENT OF ENERGY
FEDERAL ENERGY TECHNOLOGY CENTER
(Pittsburgh Office)



- | | | |
|----|--|--|
| 1. | Comfort Inn
1340 Lebanon Church Road
West Mifflin, PA 15122 Fax: (412) 650-6011
King \$67.50 | 1-800-228-5150
Ph: (412) 653-6600 |
| 2. | Hampton Inn
1550 Lebanon Church Road
Pittsburgh, PA 15236
King \$84.00 | 1-800-HAMPTON
Ph: (412) 650-1000
Fax: (412) 650-1001 |
| 3. | Holiday Inn
164 Fort Couch Road
Pittsburgh, PA 15241 | 1-800-HOLIDAY
Ph: (412) 833-5300
Fax: (412) 831-8539 |

1. Exit airport and follow the signs for Pittsburgh, which will take you onto Route 60 South.
2. Route 60 becomes Route 22-30, "Parkway West."
3. Route 22-30 runs into Route 279 (Penn Lincoln Highway).
4. Stay on Route 279 until you reach Exit 7A, labeled Truck Route 19 South/Route 51 South, Uniontown. Note: This exit is just before the Fort Pitt Tunnel.
5. You will continue on Route 51 South for approximately 7.75 miles.
6. After you pass under the railroad trestle, take the very first road to your right. (If you have gone over the overpass, you have gone too far -- you'll need to turn around and try again.)
7. Having made proper right turn, you will be on Curry Hollow Road.
8. When on Curry Hollow, you will go over two hills (7 stop lights). After the 5th stop light (a cemetery will be on your left) you want to get into the left-hand lane.
9. At the bottom of the second hill (7th stop light and after 1.5 miles), you will be at a 3-way intersection (you will see two brown signs with arrows pointing left, one showing "Bruceton Research Center" and the other "South Park"). Proceed in the left-hand lane onto Brownsville Road (towards Bruceton Research Center).
10. Brownsville Road becomes Cochrans Mill Road after the stop sign. After driving 2.0 miles, the DOE/NETL entrance is on Cochrans Mill Road (right-hand side -- you will see a sign for the Bruceton Research Center).
11. Make the right-hand turn into the Bruceton Research Center. Go to the Main Gate (Guardhouse) to receive directions to DOE/NETL's Guardhouse for either Building 920 or Building 95. Upon arrival at the appropriate Guardhouse, you will sign-in and-out, receive parking tags, and directions for locating the person you will be visiting.

REPORTING REQUIREMENTS CHECKLIST

88

J.1 GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (MAR 1999)

The contractor shall prepare and submit (postage prepaid) the plans and reports indicated on the "Reporting Requirements Checklist" to the addressee identified on the checklist. The level of detail the contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime contractors are required to submit to DOE.

J.2 HOT LINE REPORT (MAR 1999)

The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. The report shall be submitted by the most rapid means available, usually electronic, and should confirm telephone conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that expedition in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly timely manner. The report should include:

1. Contractor's name and address;
2. Contract title and number;
3. Date;
4. Brief statement of problem or event;
5. Anticipated impacts; and
6. Corrective action taken or recommended.

Hot line reports shall document the incidents listed below:

1. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of the discovery of the incident.
3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours following discovery.
4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the discovery of the failure.
5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
6. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release which is in violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported, but within 24 hours of the discovery of the accident.

8. Any incident which causes a significant process or hazard control system failure, or is indicative of one which may lead to any of the above defined incidents, is to be reported as soon as possible, but within 5 days of discovery.

The requirement to submit Hot Line Reports for the incidents identified in 1, 2, 3, 6, or 7 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.

When an incident is reported in accordance with 4, 5, 6, 7, or 8, the contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first; if possible, and coordinated with NETL Management and Communications Division, the Contracting Officer Representative (COR) and the Contracting Officer.

J.3 PROPERTY REPORTS (MAR 1999)

The NETL Property Handbook entitled "Management of Government Property in the Possession of Contractors," contains forms, instructions, and suggested formats for submission of property reports. This handbook can be found at <http://www.netl.doe.gov/business/index.html>.

J.4 REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120) (MAR 1999)

This report submitted on the SF-1428 and SF-120 is due immediately upon completion or termination of the contract. The contractor is required to perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract.

CONTRACT PRICING PROPOSAL COVER SHEET	1. SOLICITATION / CONTRACT / MODIFICATION NO.	FETC APPROVED FORM
--	---	--------------------

2. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT	3B. TELEPHONE NO.
4. TYPE OF CONTRACT ACTION (Check)		
A. NEW CONTRACT		D.
B. CHANGE ORDER		E.
C.		✓ F.

P

6. PROPOSED COST (A + B = C)		
A. COST TO DOE	B. COST-SHARE	C. TOTAL COST

7. PLACE(S) AND PERIOD(S) OF PERFORMANCE

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. (Continue on reverse, and then on plain paper, if necessary, use same headings.)

A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. REF.

9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING (If available)

A. CONTRACT ADMINISTRATION OFFICE	B. AUDIT OFFICE
-----------------------------------	-----------------

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? (If "yes," identify) <input type="checkbox"/> YES <input type="checkbox"/> NO	11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? (If "Yes," complete Item 11B) <input type="checkbox"/> YES <input type="checkbox"/> NO	11B. TYPE OF FINANCING (✓ one) <input type="checkbox"/> ADVANCE PAYMENTS <input type="checkbox"/> PROGRAM PAYMENTS <input type="checkbox"/> GUARANTEED LOANS
12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? (If "Yes," identify item(s), customer(s) and contract number(s)) <input type="checkbox"/> YES <input type="checkbox"/> NO	13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST PRINCIPLES? (If "No," explain) <input type="checkbox"/> YES <input type="checkbox"/> NO	

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA (Public Law 91-379 as amended and FAR PART 30)

A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? (If "No," explain in proposal) <input type="checkbox"/> YES <input type="checkbox"/> NO	B. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS-1 OR 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate) <input type="checkbox"/> YES <input type="checkbox"/> NO
C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NON-COMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal) <input type="checkbox"/> YES <input type="checkbox"/> NO	D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal) <input type="checkbox"/> YES <input type="checkbox"/> NO

This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the Contracting Officer or authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

15. NAME AND TITLE (Type)	16. NAME OF FIRM
17. SIGNATURE	18. DATE OF SUBMISSION

Government Furnished Property

Pittsburgh, PA Site

Control Station	Radio Ht750-uhf 16 Channel
Repeater Msf 5000	Radio Ht750-uhf 16 Channel
Computer Data Card W/compo	Radio Ht750-uhf 16 Channel
Disk Corel Cd Creator Vers	Radio 16 Channel
Argus Software 1-3.5" Disk	Radio 16 Channel
Chair, Ergonomic Rotary W/	Microwave Oven Touchmatic
Ctr-69 Voice Operated Tape	Repeater, Radio
Gateway 4dx-33 Personal Co	Walkie Talkie Motorola Ht6
Motorola 6 Unit Battery Ch	Walkie Talkie Motorola Ht6
35 Watt Kenwood Base Power	Computer Deskpro W/2 Mb Ra
Monitor 17" Color Nanao	Copier Xerox Mdl #5012
Radio Vhf	Monitor Gateway Crystal Sc
Radio Vhf	Monitor Weather
Ceramic Heater No 5e199	Radio Portable Motorola Ra
Controller Power Comand Ce	Radio Portable Motorola Ra
Scanjet li	Radio Portable Motorola Ra
Tape Drive External Backup	Computer Hp Vectra 286 Mdl
Station 35 Watt Uhf 16 Cha	Gang Charger Regular Rate
Power Supply Apc Smart Ups	Walkie Talkie Kenwood Tk24
Power Supply Smart Ups 250	Walkie Talkie Kenwood Tk24
Command Center plus Curtis	Walkie Talkie Kenwood Tk24
Computer W/256k 1mb Video	Walkie Talkie Kenwood Tk24
Monitor Trinitron	Walkie Talkie Kenwood Tk24
Command Center plus Curtis	Scanner 16 Channel Uniden
Radio Motorola Gp300 W/dmt	Scanner 16 Channel Uniden
Zip Drive Iomega 100 Meg	Radio Moble 16 Channel Max
Printer Hp 660c	Scanner 16 Channel Uniden
Radio Nomenclature H01rdc9	Radio Moble 16 Channel Max
Walkie Talkie Motorola Ht6	Camera 35mm Gives Time & D
Dehumidifier Whirlpool	Metal Detector Hand Held G
Monitor Data Card	Metal Detector Hand Held G
Printer Data Card W/data a	Laminator Q-sign 1200 Ides
Backdrop Datacard	Key Machine Ilco
Camera W/tripod Data Card	Radio Portable Motorola
Walkie Talkie Motorola Ht6	Radio Motorola Ht600
Motorola Gp-300 Uhf 8 Chan	Edge Light Bar W/switch Co
Keyboard Data Card	Walkie Talkie 600
Shredder Powershred 3102w5	Polaroid Spectra Camera #C
Monitor Nanao	Laminator
Phones Cellular Digital Po	Cassette Recorder/reproduc
Monitor Ctx	Edge Light Bar W/accesorie
Monitor Tiger Direct Part	Edge Light Bar W/accesorie
Radio	Air Conditioner Roof Top 1
Radio	Mega Phone Hand Held Er-55
Radio	Key-box
Analyzer Battery Condition	Safe
Computer P5mmx200/gn+/I Ba	Mega Phone Hand Held Er-55
Radio Mobile 16 Channel Uh	Spotlight One Million Cand
Radio Mobile 16 Channel Uh	Siren W/ Pa System & Acces
Radio Visar Uhf 16 Channel	Radio Base Station
Radio Visar Uhf 16 Channel	Radio Motorola Ht600
Lightbar W/siren,switch,sp	Radio Motorola Ht600
Radio Mobile W/channel Cas	
Radio Ht750-uhf 16 Channel	
Radio Ht750-uhf Channel W/	
Radio Ht750-uhf 16 Channel	
Radio Ht750-uhf 16 Channel	
Radio Ht750-uhf 16 Channel	
Radio Ht750-uhf 16 Channel	
Radio Ht750-uhf 16 Channel	

Morgantown, WV Site

Base Station Adm Repeat
Binoculars
Caller Id Monitor, Nuisance
Camera Color Video
Cell Phone
Cell Phone
Computer Personal
Megaphone Power, Hand Held
Pager
Radio Hand Held
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Hand Held Communic
Radio Scanning 16 Chan
Radio Scanning 16 Chan
Radio, Hand Held W/charger
Radio, Hand Held W/charger
Radio, Hand Held W/charger
Typewriter Electric, Correct

AGREEMENT

between

K-RAY SECURITY, INC.
MORGANTOWN, WEST VIRGINIA

and

THE INTERNATIONAL, UNITED PLANET GUARD WORKERS
OF AMERICA (UPGWA) AND ITS AFFILIATED LOCAL UNION NO. 502

Term:

June 1, 2000

through

May 31, 2005

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AGREEMENT

ARTICLE I - PREAMBLE

THIS AGREEMENT has been entered into effective June 1 ,2000 between K-RAY SECURITY INC., hereinafter referred to as the "Company," and THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA) AND ITS AFFILIATED LOCAL UNION NO. 502, hereinafter collectively referred to as the "Union".

ARTICLE II - UNION RECOGNITION

The Company recognizes the Union as the sole and exclusive agent for the purpose of collective bargaining for all full-time and regular part-time security officers performing guard duties as defined in Section 9(b)3) of the National Labor Relations Act employed by the Company at the U.S. Department of Energy **National Energy Technology Laboratory**, Morgantown, West Virginia, excluding, all office, clerical and professional employees and supervisors as defined in the Act and all other employees.

ARTICLE III - UNION SECURITY

All present employees of the Company covered by this Agreement who are members of the Union on the date of execution of this Agreement, shall remain members of the Union in good standing as a condition of employment. All employees of the company covered by this Agreement who are not members of the Union and all such employees who are hired hereafter, shall become and remain members of the Union in good standing as a condition of employment on and after 31 working days following the date of execution of this Agreement, whichever is later.

The failure of any employee to become a member of the Union at the required time shall obligate the company, upon written notice from the Union to such affect and to the further effect that union membership was available to the employee on the same basis as to other members, to forthwith discharge such employee. Further, the failure of any employee to maintain his union membership in good standing as required herein shall, upon written notice to the Company by the Union to such effect, obligate the Company to discharge such employee.

The Union shall indemnify the Company and save it harmless from any claim, loss, damage, cost or expense arising out of the discharge of any employee under this Article, and the company shall not be required to make any investigation of, but shall be entitled to rely on, any representation made by the Union with respect to the discharge of any employee for failure to join the union or to maintain Union membership pursuant to this Article.

ARTICLE IV - DUES, CHECK-OFF AND AUTHORIZATION FORM

The Company will deduct and pay to the union the regular amount of initiation fee and union membership dues established by the Union from the pay of each employee covered by this Agreement who authorizes and directs the Company to make such deductions. Each such authorization shall be in writing on a form provided by the Union and shall be governed by the provisions therefor.

The Union shall indemnify the Company against and save it harmless from any claims, loss, damages, cost or expense arising out of any wrongful deduction and payment of any amount under the Article. All dues and initiation fees shall be deducted on the first payday of each month and the Company shall transmit to the Union, not later than the 15th day of the month in which the deductions were made, a check for the total amount paid on his behalf. In the event an employee does not have sufficient earnings due him in any pay period to cover the amount of said deductions for that pay period, the Union shall be responsible for securing the dues for that pay period.

ARTICLE V - NO STRIKES, NO LOCKOUTS

Neither the Union nor employee covered by this Agreement shall authorize, encourage or engage in any strike, sympathy strike, stoppage of work, slowdown or other interference with work or with the Company's business during the term of this Agreement. The Company shall not lock out its employees during the term of this Agreement.

ARTICLE VI - MANAGEMENT RIGHTS

SECTION 1.

Subject to the term of this Agreement, including the Grievance and Arbitration provision herein contained, it is agreed that the operation of the business and direction of the employees, including the making and enforcing of reasonable rules that do not conflict with the Agreement to assure orderly efficient operation, the determination of employees competency, the right to hire, to transfer, to Promote, to demote, to discipline, to discharge for just cause to lay off for lack of work, are rights vested exclusively in the Management of the Company. Management shall also have the exclusive right to discharge any employee who has been denied access to the premises by any government agency.

SECTION 2.

The above Rights of Management are not all inclusive, but indicate the type of matters or rights which belong to and are inherent to Management. Any of the rights, power or authority the Company had prior to the signing of this Agreement, are retained by the Company, except those specifically abridged or modified by this Agreement and any supplemental agreements that may hereafter be made.

SECTION 3.

If any of the above rights have been expressly abridged by a specific provision of this Agreement, the specific provision of this Agreement shall apply.

ARTICLE VII - HOURS OF WORK AND CALL-IN

The regular work week for all employees shall be eight (8) hours per day, five (5) days per week, for a total of forty (40) hours per week, beginning on Sunday and ending on Saturday, unless the government mandates changes as to the days of the week that work is performed by bargaining unit members at the Morgantown facility.

All hours worked in excess of forty (40) hours per week shall be paid for at the rate of time and one-half. In the event of an emergency, employees may be required to work overtime.

The Company will attempt to distribute overtime equally among bargaining unit personnel, provided such personnel have the requisite skill and ability to perform the work needed. In the event all qualified employees reject the request to perform overtime, the overtime shall be performed by the qualified employee with the least overtime hours worked within the classification at the Company's discretion.

The Company shall have the right to schedule working hours or working days and to make revisions in such schedule to meet its needs or the needs of the government.

Employees shall be permitted to switch shifts upon mutual agreement, if such written requests are approved by the Company with one (1) week notice and such changes occur within a single week so as not to create overtime. Company approval in such matters shall not be unreasonable withheld.

Any employee called in on any of his normal days off shall receive a minimum of four (4) hours of work or be paid for the difference, if any, between the time worked and four (4) hours pay if sent home.

When an employee finds it necessary to be absent without having prior approval, he or she shall notify the Security Officer on duty four (4) hours before the beginning of his/her shift. The Security Officer on duty will the contact the Security supervisor.

ARTICLE VIII - HIRING OF NEW EMPLOYEES

The Company shall have the right to hire employees from any source whatsoever. All new employees shall be on probation for ninety (90) working days actually worked by the employee, and during such probationary period the Company shall be the judge as to whether or not such new employee is qualified to continue in its employ. The Company may discharge such employees for any reason in its discretion.

Unless the needs of the company would make it impractical to do so, the Company will communicate with the Union whenever the Company needs to hire additional employees who would be covered by this Agreement. The Company will give fair consideration on a nondiscriminatory basis to all applicants for employment, regardless of membership in the Union.

In hiring of employees, the Company will notify the Union or alternate Steward within five (5) working days after date of hire.

ARTICLE IX - UNION REPRESENTATION

The Union's duly authorized agent or representative shall have the right to visit the premises of the Employer at the U.S. Department of Energy National Energy Technology Center at reasonable intervals and at a reasonable time during work hours for the purpose of discussing grievances with the union or alternate Steward or the Company. Upon such visits, the Union's representative shall first report to the Company or its duly authorized agent for this purpose.

The company shall permit the Union or alternate Steward a reasonable amount of time to handle Union business, provided the steward advised the Company supervisor of the time Union business starts and finishes. The Union will furnish the Company the names of all Stewards,

ARTICLE X - UNION BULLETIN BOARD

The Union will be provided space on a bulletin board for the purpose of posting Union notices and information, subject to Company approval, which shall not be unreasonably withheld.

ARTICLE XI - CLOTHING AND EQUIPMENT

Should the company require employees to wear specific attire, they will provide such attire for all employees.

Neck ties shall be worn only with long sleeved shirts, jackets or sweaters. Long sleeved shirts will be worn from November 1 thru April 15 weather permitting and the Company discretion. Only white T-shirt, or V-necks are to be worn under uniform shirts. Any clothing article that was not issued by the company must be approved by the Security Supervisory prior to wearing it.

ARTICLE XII - SAFETY

In order to provide safety control for protection to the life and health of employees and prevention of damage to property, supplies and equipment, the Company and the employees shall comply with all applicable safety requirements established by the Company or the Government.

ARTICLE XII - BARGAINING UNIT WORK

Supervisors shall not perform bargaining unit work except in the event of training, emergency or if sufficient qualified bargaining unit employees are not available to perform the work.

ARTICLE XIV - REDUCTION IN FORCE

When it becomes necessary to reduce the working force, the last person hired shall be the first laid off, and if the working force thereafter is increased, the employees shall be recalled in the reverse order in which they were laid off.

When an employee is discharged or laid off, he or she shall be paid by check for any wages owing at his or her next regular period, mailed by registered or certified letter to his or her last known address, at his or her next scheduled payday.

When the Company recalls laid off employees, it shall attempt to contact the employee by telephone, it shall telephone the Union, and it shall mail a letter by registered or certified mail or telegram to the employee's last known address. The employee may be required to respond and be available for work within forty-eight (48) hours of the above procedure. All employees are required to keep the Company informed of their current address and telephone number.

ARTICLE XV - SENIORITY

The term "seniority" shall mean the length of continuous service of an employee. Seniority is based upon length of service at specific site. Seniority at one site will not preclude the established line of seniority at another Department of Energy Site. Classification seniority shall be utilized for purpose of days off, layoff, and recall, subject to the employee's skill and ability to perform the work required.

The Union and alternate Steward shall be entitled to top seniority at the facility area, for purpose of layoff and recall, provided they have the requisite skill and ability to perform the remaining work.

Refer to Exhibit "A" for seniority list

Seniority shall be lost for the following reasons:

- (a) Quit;
- (b) Discharge for just cause;
- (c) Layoffs for one (1) year;
- (d) Failure to return to work within forty-eight (48) hours after notice of recall sent by certified mail, return receipt requested, or telegram to the employee's last address on record with the Company;
- (e) Failure to report to work after three (3) working days absence without notifying the Company during the interim of acceptable reason for the absence;

Continuous illness or disability for a period of time in excess of one (1) year. Upon the return of any employee who has been ill for a protracted period within the one year period and prior to returning to actual work, the Company shall have the right to require a medical examination of the employee to determine whether or not the employee may safely and healthfully return to work. In the event that a dispute arises between the employee's doctor and the Company's doctor, then the matter shall be submitted to the Grievance and Arbitration Procedure provided in Article XVI.

Seniority shall not commence until after an employee has been employed for ninety (90) working days actually worked by the employee, and then shall revert back to date of hire.

Should an employee request a change from night shift work or day shift work, preference for such assignment shall be made on the basis of seniority when such work becomes available. Vacancies within a classification shall be posted for bidding by classification seniority, provided the employee has the skill and ability to perform the work required.

ARTICLE XVI - GRIEVANCE AND ARBITRATION PROCEDURE

The parties to this Agreement, in the interest of resolving all disputes arising out of the interpretation or application of this Agreement, have settled upon the following as an exclusive, final and binding procedure for the resolution of all disputes, including complaints or grievances arising out of interpretation or application of this Agreement. With respect to any dispute, complaint or grievance arising out of the interpretation or application of the Recognition provision of this Agreement, the Union may at its option, proceed immediately to arbitration. Disputes, complaints or grievances arising out of all other provisions of this Agreement shall be resolved in accordance with the following procedures where applicable. The Company shall not have the right to submit its own grievances to arbitration.

STEP 1.

Any aggrieved employee other than probationary employees as defined in Article XV shall be entitled to utilize the Grievance Procedure. Such employee may arrange to discuss his grievance with his immediate supervisor in the presence of the Union or alternate Steward, within three (3) working days after the incident giving rise to the grievance.

STEP 2.

If the grievance is not settled, it must be reduced to writing by the Union and submitted to the Director of Operations or his designated representative within five (5) working days of the incident giving rise to the grievance. The Director of Operations or his designated representative will then meet with the Union or alternate Steward and the employee within five (5) working days of the receipt of the grievance to attempt to resolve the matter

STEP 3.

If no satisfactory settlement of the grievance is reached, the Union will submit the grievance to the Human Resources Manager or Designated Corporate Representative of the Company within five (5) working days of the Step 2 meeting. The Human Resources manager will meet with the Union Business Agent within five (5) working days of the receipt of the grievance to attempt to resolve the matter.

STEP 4.

If no satisfactory settlement of the grievance is reached, then the Union may, within twenty (20) working days after Step 3 meeting, refer the matter to Arbitration. Such arbitrator shall not have the power to alter this Agreement or any of its terms in any way. The arbitrator shall be selected and the arbitration conducted under the then prevailing rules and regulation of the American Arbitration Association.

The arbitrator, upon notice to both parties, hears the issues involved. His decision shall be submitted in writing and shall be final and binding upon the parties.

In the case of a discharge, the arbitrator shall have the power to sustain the discharge or to order reinstatement of the employee with or without pay for days lost. The arbitrator shall not have the authority to consider any grievance involving a discharge by reason of the denial of access to the facility by the Government.

The fee of the arbitrator and administrative charges of the American Arbitration Association, shall be borne totally by both parties.

ARTICLE XVII - NON-DISCRIMINATION

Neither the Company nor the Union shall discriminate against, or in favor of, any employee on the basis of race, color, national origin, religion, sex, age, non-job-related disability, or veterans status, as required by law.

ARTICLE XVIII - VACATIONS

1. Each Employee in the employ of the Company shall be entitled to a paid vacation according to the following schedule:

LENGTH OF SERVICE	VACATION
1 year	2 weeks
8 years	3 weeks
15 years	4 weeks
25 years	5 weeks

There shall be no carry-over of vacation from year to year. In the event any employee will lose his or her accrued unused vacation time under the no carryover rule because he or she has been precluded from taking vacation due to manpower requirements, the employee will receive pay in lieu of the accrued unused vacation on the next pay date following the employees Anniversary date.

2. The length of service shall be construed to mean all service with present Company and predecessor company in the performance of similar work at the U.S. Department of Energy **National Energy Technology Laboratory**, Morgantown, West Virginia.
3. Any employee whose employment is voluntarily or involuntarily terminate, including termination by reason of death, will receive pro rate vacation pay calculated on the basis of one twelfth (1/12) for each month of service completed since the prior anniversary date. Employees who taken a leave of absence without pay beyond thirty (30) calendar days, pursuant to Article XX, shall be entitled to a pro-rated vacation for the following vacation year.
4. Refer to Exhibit "B" regarding vacation scheduling.
5. In the event of an employee death, any unused vacation will be paid with the last check issued to the employee.
6. One (1) day's vacation pay for full time employees shall be equal to the compensation the employee receives when the employee works his/her normally scheduled workday. One week vacation pay for an employee shall be equal to the compensation the employee receives when the employee works his/her normally scheduled work week.
7. Only one (1) bargaining unit employee shall be permitted to take his or her vacation on any single day, unless the company has enough man-power to let more the one (1) bargaining unit employee on vacation at a time.

ARTICLE XIX - HOLIDAYS

1. Full Time employees shall receive ten (10) paid holidays per year. These holidays shall be those holidays designated as the Department of Energy National Energy Technology Laboratory holidays:

New Year's Day	Labor Day
President's Day	Columbus Day

Memorial Day
Independence Day
Martin Luther King Jr.

Veterans Day
Thanksgiving Day
Christmas Day

in addition to these days for which the facility is closed as set forth in Section 2 of this Article.

2. The Company agrees to pay its employees for any day that the Federal Government declares a holiday and the employees are not able to work due to the closing of the facility, provided the Government reimburse the Company for such wages due.
3. Holiday pay shall be computed for all employees in the same manner in which vacation pay is calculated as indicated in Article XVIII of this Agreement. Employees who work on a holiday shall receive time and one half for the hours worked that day in addition to the holiday pay.

ARTICLE XX - PERSONAL DAYS

Full time bargaining unit employees shall receive four (4) paid personnel days and Part time bargaining unit employees shall receive two (2) paid personal days off per year after one (1) year of continuous site service. These days are available June 1 thru May 31, 2001 these days shall not be accumulated or exchanged for pay.

The employee shall notify the company four (4) hours prior to the requested Personal Day.

Personal Days shall not be utilized as extended vacation or holiday as stated in Exhibit "B".

ARTICLE XXI - LEAVE OF ABSENCE

A leave of absence without pay, for reasonable cause. As determined by the Company, may be granted for a period of up to thirty (30) days, with written approval of the employees Supervisor at least fifteen (15) days in advance of such leave of absence, providing the employee can be spared from his regularly assigned job duties. Such leave of absence maybe extended for good cause shown, upon written approval of the Company. Employees who are away for a period longer than the term of their leave of absence shall be considered to have voluntarily terminated their employment with the Company.

Employees shall not receive holiday pay for any holiday which falls during the period they are on leave without pay. Employees on leave of absence without pay, which extends beyond thirty (30) calender days, shall not receive any accruals or benefits.

ARTICLE XXII - FUNERAL LEAVE

An employee who has completed his probationary period shall be entitled to a leave of absence with pay at his regular rate for a maximum of three,(3) regular scheduled workdays lost. in the case of death in his immediate family (namely mother, father, mother-in-law, father-in-law, legal guardian, husband, wife, daughter, son, brother, sister) provided the leave of absence is taken during the period between the date of death and the day following the burial, both inclusive, and provided further that the employee is prepared to offer valid proof of death and relationship upon request.

ARTICLE XXIII - JURY DUTY

An employee who has completed his or her probationary period and who serves on jury duty shall be compensated. by the company in the amount of the difference between his or her ' regular scheduled workdays lost and the ,amount received as jurors fee up to a maximum of two,(2) weeks. Whenever the employee is temporarily excused from jury duty by the court on his or her scheduled workday, he or she shall advise his supervisor as promptly as possible and stand ready to report for work if requested by the Company. The receipt

of a subpoena or the notice report for jury duty must be reported immediately to the appropriate supervisor and the Company may request that the employee be excused or exempted from such jury duty if, in the opinion of the Company, the employees services are essential at the time of proposed jury duty.

ARTICLE XXV - WAGES

	<u>06/01/00</u>	<u>06/01/01</u>	<u>06/01/02</u>	<u>06/01/03</u>	<u>06/01/04</u>
LIEUTENANT	\$12.83	\$13.22	\$13.62	\$14.03	\$14.45
SERGEANT	\$12.15	\$12.52	\$12.90	\$13.29	\$13.69
GUARD II	\$11.92	\$12.28	\$12.65	\$13.03	\$13.42
NEW HIRES	\$ 9.50	\$10.00	\$10.35	\$10.66	\$10.98

New hires pay will increase over a nine (9) month period until it reaches the Guard II rate.

ARTICLE XXVI - HEALTH AND WELFARE BENEFITS

The Company shall provide health and welfare benefits or pay , according to the latest U.S. Department of Labor Wage Determination, currently at \$2.56 Per hour worked for the first year. Benefits will be subject to increase in the consecutive years as determined by the U.S. Department of Labor.

The Company shall provide part-time unit employees with a retirement benefit or pay, according to the latest U.S. Department of Labor Wage Determination, currently at \$2.56 per hour worked.

ARTICLE XXVIII - DISCHARGE

No employee shall be discharged or disciplined except for just cause, provided, however, that the Company shall have the right to discharge for any reason any new employee during the first ninety (90) working days of his or her employment actually worked by the employee. Warning notices that do not involve time off shall be voided after six months.

ARTICLE XXVIII - LIGHT DUTY ASSIGNMENTS

The Company shall make a reasonable accommodation to employees who are disabled. This provision shall not be construed to require the Company to create jobs or work it does not have or to employ persons not capable of performing the available work with reasonable accommodation. The Company shall be permitted to require appropriate medical certification, on a continuing basis, from persons for whom reasonable accommodation has been made. This provision shall take precedence over Article VII to the extent a conflict arises.

ARTICLE XXVIII - TERM OF AGREEMENT

Except as herein otherwise expressly provided, this Agreement shall become effective as of 1st day of June 2000, and shall remain in full force and effect up to and including the 31st day of May 2005.

EXECUTED as of the _____ day of February, and year first above written

K-RAY SECURITY, INC.

THE INTERNATIONAL UNION
UNITED PLANT GUARD WORKERS OF
AMERICA (UPGWA)
AFFILIATED LOCAL UNION NO. 502

EXHIBIT A

Robert Bryan ***	Guard 11	10-31-79
Scott Lowe	Lieutenant	10-28-82
Linda Hess*	Guard 11	02-14-83
Harold Hines	Guard 11	08-08-84
Sam Sinclair	Guard 11	08-10-87
Kent Garvin	Sergeant	06-04-91
Ed Horton **	Guard 11	11-14-94
Ricky Lewis	Guard 11	10-03-96
Thomas Matthews	Guard 11	06-18-99
Jeff Webb	Guard 11	11-21-99

* Steward
** Alternate Steward
*** Safety

EXHIBIT B

K-RAY SECURITY MORGANTOWN, WV

VACATION GUIDELINES

The following guidelines will be utilized to schedule vacation requests.

1. Vacation request forms will be issued to all officer the first of December each year. The vacation request forms will be completed and returned to the Project Manager's office no later than the first of January.
2. Regardless of the number of days a officer earns, you will be allowed to make up to three vacation requests.
3. When selecting vacation periods, LWOP requests will not be honored. LWOP requests should be made as needed and coverage available. (see request for LWOP)
4. The dates of one leave request will not overlap the dates of another leave request due to insufficient coverage. Only one (1) officer will be granted "earned leave" at a time.
5. All first vacation requests will be scheduled first. All second vacation requests will be scheduled second, and then all third vacation requests will be scheduled. You should make a first choice and a second choice within each request.
6. Christmas and New Years holidays will not be allowed within the same vacation period. Requests for these holidays will be Sunday through Saturday for Christmas, and Sunday through Saturday for New Years.
7. In cases where more that two officers request the same vacation period, the officer with seniority will be scheduled first.
8. It will be each officer's responsibility to complete the vacation forms and submit them as outlined above.
9. If a officer fails to submit his/her vacation request as outlined above, it will be considered that he/she has no vacation preference, and will not be considered for scheduled vacation.
10. Personal Days will not be prescheduled with the vacation periods on the yearly vacation schedule.
11. A yearly vacation schedule will be posted on the Bulletin Board and/or by Lan. (January 31 through January 31)

**K-RAY SECURITY
MORGANTOWN, WV**

Each officer will list the dates for their vacation requests below:

1st request - 1st choice:

2nd choice:

2nd request - 1st choice:

2nd choice:

3rd request - 1st choice:

2nd choice:

Comments:

E.O.D.: _____

Vacation Days Earned Yearly: _____

Name:

Date: _____

Vacation Request

AGREEMENT

between

K-RAY SECURITY, INC.
MORGANTOWN, WEST VIRGINIA

and

THE INTERNATIONAL, UNITED PLANET GUARD WORKERS
OF AMERICA (UPGWA) AND ITS AFFILIATED LOCAL UNION NO. 502

Term:

June 1, 1999

through

May 31, 2000

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AGREEMENT

ARTICLE I - PREAMBLE

THIS AGREEMENT has been entered into effective June 1, 1999 between K-RAY SECURITY INC., hereinafter referred to as the "Company," and THE INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA) AND ITS AFFILIATED LOCAL UNION NO. 502, hereinafter collectively referred to as the "Union."

ARTICLE II - UNION RECOGNITION

The Company recognizes the Union as the sole and exclusive agent for the purpose of collective bargaining for all full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act employed by the Company at the U.S. Department of Energy Federal Energy Technology Center, Bruceton, Pennsylvania, excluding, all office, clerical, and professional employees and supervisors as defined in the Act and all other employees.

ARTICLE III - UNION SECURITY

All present employees of the Company covered by this Agreement who are members of the Union on the date of execution of this Agreement, shall remain members of the Union in good standing as a condition of employment. All employees of the company covered by this Agreement who are not members of the Union and all such employees who are hired hereafter, shall become and remain members of the Union in good standing as a condition of employment on and after 31 working days following the date of execution of this Agreement, whichever is later.

The failure of any employee to become a member of the Union at the required time shall obligate the company, upon written notice from the Union to such effect and to the further effect that union membership was available to the employee on the same basis as to other members, to forthwith discharge such employee. Further, the failure of any employee to maintain his union membership in good standing as required herein shall, upon written notice to the Company by the Union to such effect, obligate the Company to discharge such employee.

The Union shall indemnify the Company and save it harmless from any claim, loss, damage, cost or expense arising out of the discharge of any employee under this Article, and the company shall not be required to make any investigation of, but shall be entitled to rely on, any representation made by the Union with respect to the discharge of any employee for failure to join the union or to maintain Union membership pursuant to this Article.

ARTICLE IV - DUES, CHECK-OFF AND AUTHORIZATION FORM

The Company will deduct and pay to the union the regular amount of initiation fee and union membership dues established by the Union from the pay of each employee covered by this Agreement who authorizes and directs the Company to make such deductions. Each such authorization shall be in writing on a form provided by the Union and shall be governed by the provisions therefor.

The Union shall indemnify the Company against and save it harmless from any claims, loss, damages, cost or expense arising out of any wrongful deduction and payment of any amount under the Article. All dues and initiation fees shall be deducted on the first payday of each month and the Company shall transmit to the Union, not later than the 15th day of the month in which the deductions were made, a check for the total amount paid on his behalf. In the event an employee does not have sufficient earnings due him in any pay period to cover the amount of said deductions for that pay period, the Union shall be responsible for securing the dues for that pay period.

ARTICLE V - NO STRIKES, NO LOCKOUTS

Neither the Union nor employee covered by this Agreement shall authorize, encourage or engage in any strike, sympathy strike, stoppage of work, slowdown or other interference with work or with the Company's business during the term of this Agreement. The Company shall not lock out its employees during the term of this Agreement.

ARTICLE VI - MANAGEMENT RIGHTS

SECTION 1.

Subject to the term of this Agreement, including the Grievance and Arbitration provision herein contained, it is agreed that the operation of the business and direction of the employees, including the making and enforcing of reasonable rules that do not conflict with the Agreement to assure orderly efficient operation, the determination of employees competency, the right to hire, to transfer, to Promote, to demote, to discipline, to discharge for just cause to lay off for lack of work, are rights vested exclusively in the Management of the Company. Management shall also have the exclusive right to discharge any employee who has been denied access to the premises by any government agency.

SECTION 2.

The above Rights of Management are not all inclusive, but indicate the type of matters or rights which belong to and are inherent to Management. Any of the rights, power or authority the Company had prior to the signing of this Agreement, are retained by the Company, except those specifically abridged or modified by this Agreement and any supplemental agreements that may hereafter be made.

SECTION 3.

If any of the above rights have been expressly abridged by a specific provision of this Agreement, the specific provision of this Agreement shall apply.

ARTICLE VII - HOURS OF WORK AND CALL-IN

The regular work week for all employees shall be eight (8) hours per day, five (5) days per week, for a total of forty (40) hours per week, beginning on Sunday and ending on Saturday, unless the government mandates changes as to the days of the week that work is performed by bargaining unit members at the Bruceton facility.

All hours worked in excess of forty (40) hours per week shall be paid for at the rate of time and one-half. In the event of an emergency, employees may be required to work overtime.

The Company will attempt to distribute overtime equally among bargaining unit personnel, provided such personnel have the requisite skill and ability to perform the work needed. In the event all qualified employees reject the request to perform overtime, the overtime shall be performed by the qualified employee with the least overtime hours worked within the classification at the Company's discretion.

The Company shall have the right to schedule working hours or working days and to make revisions in such schedule to meet its needs or the needs of the government.

Employees shall be permitted to switch shifts upon mutual agreement, if such written requests are approved by the Company with one (1) week notice and such changes occur within a single week so as not to create overtime. Company approval in such matters shall not be unreasonable withheld.

Any employee called in on any of his normal days off shall receive a minimum of four (4) hours of work or be paid for the difference, if any, between the time worked and four (4) hours pay if sent home.

When an employee finds it necessary to be absent without having prior approval, he or she shall notify the Security Officer on duty four (4) hours before the beginning of his/her shift. The Security Officer on duty will then contact the Security supervisor.

ARTICLE VIII - HIRING OF NEW EMPLOYEES

The Company shall have the right to hire employees from any source whatsoever. All new employees shall be on probation for ninety (90) working days actually worked by the employee, and during such probationary period the Company shall be the judge as to whether or not such new employee is qualified to continue in its employ. The Company may discharge such employees for any reason in its discretion.

Unless the needs of the company would make it impractical to do so, the Company will communicate with the Union whenever the Company needs to hire additional employees who would be covered by this Agreement. The Company will give fair consideration on a nondiscriminatory basis to all applicants for employment, regardless of membership in the Union.

In hiring of employees, the Company will notify the Union or alternate Steward within five (5) working days after date of hire.

ARTICLE IX - UNION REPRESENTATION

The Union's duly authorized agent or representative shall have the right to visit the premises of the Employer at the U.S. Department of Energy Federal Energy Technology Center at reasonable intervals and at a reasonable time during work hours for the purpose of discussing grievances with the union or alternate Steward or the Company. Upon such visits, the Union's representative shall first report to the Company or its duly authorized agent for this purpose.

The company shall permit the Union or alternate Steward a reasonable amount of time to handle Union business, provided the steward advised the Company supervisor of the time Union business starts and finishes. The Union will furnish the Company the names of all Stewards.

ARTICLE X - UNION BULLETIN BOARD

The Union will be provided space on a bulletin board for the purpose of posting Union notices and information, subject to Company approval, which shall not be unreasonably withheld.

ARTICLE XI - CLOTHING AND EQUIPMENT

Should the company require employees to wear specific attire, they will provide such attire for all employees.

Neck ties shall be worn only with long sleeved shirts, jackets or sweaters. Long sleeved shirts will be worn from November 1 thru April 15 weather permitting and the Company discretion. Only white T-shirt, or V-necks are to be worn under uniform shirts. Any clothing article that was not issued by the company must be approved by the Security Supervisory prior to wearing it.

ARTICLE XII - SAFETY

In order to provide safety control for protection to the life and health of employees and prevention of damage to property, supplies and equipment, the Company and the employees shall comply with all applicable safety requirements established by the Company or the Government.

ARTICLE XIII - BARGAINING UNIT WORK

Supervisors shall not perform bargaining unit work except in the event of training, emergency or if sufficient qualified bargaining unit employees are not available to perform the work.

ARTICLE XIV - REDUCTION IN FORCE

When it becomes necessary to reduce the working force, the last person hired shall be the first laid off and if the working force thereafter is increased, the employees shall be recalled in the reverse order in which they were laid off.

When an employee is discharged or laid off, he or she shall be paid by check for any wages owing at his or her next regular period, mailed by registered or certified letter to his or her last known address, at his or her next scheduled payday.

When the Company recalls laid off employees, it shall attempt to contact the employee by telephone, it shall telephone the Union, and it shall mail a letter by registered or certified mail or telegram to the employees last known address. The employee may be required to respond and be available for work within forty-eight (48) hours of the above procedure. All employees are required to keep the Company informed of their current address and telephone number.

ARTICLE XV - SENIORITY

The term "seniority" shall mean the length of continuous service of an employee. Seniority is based upon length of service at the facility. Classification seniority shall be utilized for purpose of days off, layoff, and recall, subject to the employees skill and ability to perform the work required.

The Union and alternate Steward shall be entitled to top seniority at the facility area, for purpose of layoff and recall, provided they have the requisite skill and ability to perform the remaining work.

Refer to Exhibit "A" for seniority list.

Seniority shall be lost for the following reasons:

- (a) Quit;
- (b) Discharge for just cause;
- (c) Layoffs for one (1) year;
- (d) Failure to return to work within forty-eight (48) hours after notice of recall sent by certified mail, return receipt requested, or telegram to the employees last address on record with the Company;
- (e) Failure to report to work after three (3) working days absence without notifying the Company during the interim of acceptable reason for the absence;
- (f) Continuous illness or disability for a period of time in excess of one (1) year. Upon the return of any employee who has been ill for a protracted period within the one year period and prior to returning to actual work, the Company shall have the right to require a medical examination of the employee to determine whether or not the employee may safely and healthfully return to work. In the event that a dispute arises between the employees doctor and the Company's doctor, then the matter shall be submitted to the Grievance and Arbitration Procedure provided in Article XVI.

Seniority shall not commence until after an employee has been employed for ninety (90) working days actually worked by the employee, and then shall revert back to date of hire.

Should an employee request a change from night shift work or day shift work, preference for such assignment shall be made on the basis of seniority when such work becomes available. Vacancies within a classification shall be posted for bidding by classification seniority, provided the employee has the skill and ability to perform the work required.

ARTICLE XVI - GRIEVANCE AND ARBITRATION PROCEDURE

The parties to this Agreement, in the interest of resolving all disputes arising out of the interpretation or application of this Agreement, have settled upon the following as an exclusive, final and binding procedure for the resolution of all disputes, including complaints or grievances arising out of interpretation or application of this Agreement. With respect to any dispute, complaint or grievance arising out of the interpretation or application of the Recognition provision of this Agreement, the Union may at its option, proceed immediately to arbitration. Disputes, complaints or grievances arising out of all other provisions of this Agreement shall be resolved in accordance with the following procedures where applicable. The Company shall not have the right to submit its own grievances to arbitration.

STEP 1.

Any aggrieved employee other than probationary employees as defined in Article XV shall be entitled to utilize the Grievance Procedure. Such employee may arrange to discuss his grievance with his immediate supervisor in the presence of the Union or alternate Steward, within three (3) working days after the incident giving rise to the grievance.

STEP 2.

If the grievance is not settled, it must be reduced to writing by the Union and submitted to the Director of Operations or his designated representative within five (5) working days of the incident giving rise to the grievance. The Director of Operations or his designated representative will then meet with the Union or alternate Steward and the employee within five (5) working days of the receipt of the grievance to attempt to resolve the matter.

STEP 3.

If no satisfactory settlement of the grievance is reached, the Union will submit the grievance to the Human Resources Manager or Designated Corporate Representative of the Company within five (5) working days of the Step 2 meeting. The Human Resources Manager will meet with the Union Business Agent within five (5) working days of the receipt of the grievance to attempt to resolve the matter.

STEP 4.

If no satisfactory settlement of the grievance is reached, then the Union may within twenty (20) working days after Step 3 meeting, refer the matter to Arbitration. Such arbitrator shall not have the power to alter this Agreement or any of its terms in any way. The arbitrator shall be selected and the arbitration conducted under the then prevailing rules and regulation of the American Arbitration Association.

The arbitrator, upon notice to both parties, hears the issues involved. His decision shall be submitted in writing and shall be final and binding upon the parties.

In the case of a discharge, the arbitrator shall have the power to sustain the discharge or to order reinstatement of the employee with or without pay for days lost. The arbitrator shall not have the authority to consider any grievance involving a discharge by reason of the denial of access to the facility by the Government.

The fee of the arbitrator and administrative charges of the American Arbitration Association, shall be borne totally by both parties.

ARTICLE XVII - NON-DISCRIMINATION

Neither the Company nor the Union shall discriminate against, or in favor of, any employee on the basis of race, color, national origin, religion, sex, age, non-job-related disability, or veterans status, as required by law.

ARTICLE XVIII - VACATIONS

- 1. Each Employee in the employ of the Company shall be entitled to a paid vacation according to the following schedule:

LENGTH OF SERVICE VACATION

1 year	2 weeks
5 years	3 weeks
15 years	4 weeks
25 years	5 weeks

There shall be no carry-over of vacation from year to year. In the event any employee will lose his or her accrued unused vacation time under the no carryover rule because he or she has been precluded from taking vacation due to manpower requirements, the employee will receive pay in lieu of the accrued unused vacation on the next pay date following the employees Anniversary date.

- 2. The length of service shall be construed to mean all services with present Company and predecessor company in the performance of similar work at the Bruceton Center.
- 3. Any employee whose employment is voluntarily or involuntarily terminate, including termination by reason of death, will receive pro rate vacation pay calculated on the basis of one-twelfth (1/12) for each month of service completed since the prior anniversary date. Employees who taken a leave of absence without pay beyond thirty (30) calendar days, pursuant to Article XX, shall be entitled to a pro-rated vacation for the following vacation year.
- 4. Refer to Exhibit "B" regarding vacation scheduling.
- 5. In the event of an employee death, any unused vacation will be paid with the last check issued to the employee.
- 6. One (1) day's vacation pay for full time employees shall be equal to the compensation the employee receives when the employee works his/her normally scheduled workday. One week vacation pay for an employee shall be equal to the compensation the employee receives when the employee works his/her normally scheduled work week.
- 7. Only one (1) bargaining unit employee shall be permitted to take his or her vacation pay on any single day, unless the company has enough man-power to let more the one (1) bargaining unit employee on vacation at a time.

ARTICLE XIX - HOLIDAYS

- 1. Full Time employees shall receive ten (10) paid holidays per year. These holidays shall be those holidays designated as the Department of Energy Federal Energy Technology Center holidays:

New Year's Day	Labor Day
President's Day	Columbus Day

Memorial Day
Independence Day
Martin Luther King Jr.

Veterans Day
Thanksgiving Day
Christmas Day

In addition to these days for which the facility is closed as set forth in Section 2 of this Article.

2. The Company agrees to pay its employees for any day that the Federal Government declares a holiday and the employees are not able to work due to the closing of the facility, provided the Government reimburse the Company for such wages due.
3. Holiday pay shall be computed for all employees in the same manner in which vacation pay is calculated as indicated in Article XVIII of this Agreement. Employees who work on a holiday shall receive time and one half for the hours worked that day in addition to the holiday pay.

ARTICLE XX - PERSONAL DAYS

Full time bargaining unit employees shall receive four (4) paid personal days and part time bargaining unit employees shall receive two (2) paid personal days off per year after one (1) year continuous site service. These days are available June 1, 1999 thru May 31, 2000; these days shall not be accumulated or exchanged for pay.

The employee shall notify the company four (4) hours prior to the requested Personal Day.

Personal Days shall not be utilized as extended vacation or holiday as stated in Exhibit "B."

ARTICLE XXI - LEAVE OF ABSENCE

A leave of absence without pay, for reasonable cause, as determined by the Company, may be granted for a period of up to thirty (30) days, with written approval of the employees Supervisor at least fifteen (15) days in advance of such leave of absence, providing the employee can be spared from his regularly assigned job duties. Such leave of absence may be extended for good cause shown, upon written approval of the Company. Employees who are away for a period longer than the term of their leave of absence shall be considered to have voluntarily terminated their employment with the Company.

Employees shall not receive holiday pay for any holiday which falls during the period they are on leave without pay. Employees on leave of absence without pay, which extends beyond thirty (30) calendar days, shall not receive any accruals or benefits.

ARTICLE XXII - FUNERAL LEAVE

An employee who has completed his probationary period shall be entitled to a leave of absence with pay at his regular rate for a maximum of three (3) regular scheduled workdays lost, in the case of death in his immediate family (namely mother, father, mother-in-law, father-in-law, legal guardian, husband, wife daughter, son, brother, sister) provided the leave of absence is taken during the period between the date of death and the day following the burial, both inclusive, and provided further that the employee is prepared to offer valid proof of death and relationship upon request.

ARTICLE XXIII - JURY DUTY

An employee who has completed his or her probationary period and who serves on jury duty shall be compensated by the company in the amount of the difference between his or her regular scheduled workdays lost and the amount received as jurors fee up to a maximum of two (2) weeks. Whenever the employee is temporarily excused from jury duty by the court on his or her scheduled workday, he or she shall advise his supervisor as promptly as possible and stand ready to report for work if requested by the Company. The receipt of a subpoena or the notice report for jury duty must be reported immediately to the appropriate supervisor and

the Company may request that the employee be excused or exempted from such jury duty if, in the opinion of the Company, the employees services are essential at the time of proposed jury duty.

ARTICLE XXIV - SHIFT DIFFERENTIAL

All bargaining unit employees who are scheduled to commence work on the second shift shall receive a \$.35 premium for hours worked on that shift. All bargaining unit employees who are scheduled to commence work on the third shift shall receive a \$.40 premium for hours worked on that shift.

ARTICLE XXV - WAGES

	<u>06/01/99</u>
LIEUTENANT	\$13.25
SERGEANT	12.75
GUARD II	12.10
NEW HIRES	9.50

New hires pay will increase over a nine (9) month period until it reaches the Guard II rate.

ARTICLE XXVI - HEALTH AND WELFARE BENEFITS

The Company shall provide health and welfare benefits, according to the latest U.S. Department of Labor Wage Determination, currently at \$2.56 per hour worked.

The Company shall provide part-time unit employees with a retirement benefit, according to the latest U.S. Department of Labor Wage Determination, currently at \$2.56 per hour worked.

ARTICLE XXVII - DISCHARGE

No employee shall be discharged or disciplined except for just cause, provided, however, that the Company shall have the right to discharge for any reason any new employee during the first ninety (90) working days of his or her employment actually worked by the employee. Warning notices that do not involve time off shall be voided after six months.

ARTICLE XXVIII - LIGHT DUTY ASSIGNMENTS

The Company shall make a reasonable accommodation to employees who are disabled. This provision shall not be construed to require the Company to create jobs or work it does not have or to employ persons not capable of performing the available work with reasonable accommodation. The Company shall be permitted to required appropriate medical certification, on a continuing basis, from persons for whom reasonable accommodation has been made. This provision shall take precedence over Article VII to the extent a conflict arises.

ARTICLE XXVIII - TERM OF AGREEMENT

Except as herein otherwise expressly provided, this Agreement shall become effective as of 1st day of June 1999, and shall remain in full force and effect up to and including the 31st day of May 2000.

EXECUTED as of the day and year first above written

K-RAY SECURITY, INC.

THE INTERNATIONAL UNION
UNITED PLANT GUARD WORKERS OF
AMERICA (UPGWA)

AFFILIATED LOCAL UNION NO. 502

EXHIBIT A

Wayne Valentino	Guard II	01-14-80
Emiel Fetch	Guard II	10-01-84
Eric Carey**	Guard II	01-03-89
Ken Weaver	Guard II	11-06-89
Mike Settelmaier*	Guard II	08-27-90
Tom Manns	Communication Officer	01-07-91
Kevin Robinson	Guard II	10-22-96
John Yunn	Guard II	07-17-97
Ed Williams	Guard II	08-27-98
Ron Milcheck	Guard II	03-08-99
Jeff Webb	Guard II	03-11-99
Ed Sloan	Guard II	07-02-99

* Steward

** Alternate Steward

EXHIBIT B

VACATION SCHEDULING

In order to insure even and equal distribution of vacation time the following procedure will be used:

1. Starting with the most senior man and working thru the seniority list, refer to Exhibit "A," each guard will pick fifty (50) percent of their vacation time on round 1. (Example if you have four (4) weeks, you will pick ten (10) days; if you have three (3) weeks, you will pick eight (8) days for round 1, 7 for round 2, two (2) weeks will pick five (5) days).
2. Days can be picked randomly through out the year. (Remember your anniversary date. If you do not get your vacation until November, you cannot pick anything before November unless you have vacation time remaining from the previous year.)
3. If you want vacation time on a holiday, you must pick the two (2) days before and two (2) days after the holiday. (Personal Days cannot be used on holidays.)
4. Changes in vacation schedule must be approved by the Security Supervisor for approval two (2) weeks prior to the scheduled vacation. You will have three working days to reschedule the days or they will be assigned.
5. Officers, when rescheduling, cannot pick a day already picked by another officer.
6. Management will post the canceled days on the bulletin board, located at Building 923, other officers can then bid them, seniority will prevail in determining who gets the dates posted.
7. There will be no changing scheduled vacation days with another officer as this could disrupt the seniority selection system.
8. Vacation Schedules will be posted on the bulletin board at 923 for review.

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

K.1 52.204-3 TAXPAYER IDENTIFICATION. (OCT 1998)

(a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
- (d) Taxpayer Identification Number (TIN).

☐ TIN: _____

☐ TIN has been applied for.

☐ TIN is not required because:

- ☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- ☐ Offeror is an agency or instrumentality of a foreign government;
- ☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- ☐ Sole proprietorship;
- ☐ Partnership;
- ☐ Corporate entity (not tax-exempt);
- ☐ Corporate entity (tax-exempt);
- ☐ Government entity (Federal, State, or local);
- ☐ Foreign government;
- ☐ International organization per 26 CFR 1.6049-4;
- ☐ Other _____

(f) Common parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name _____

TIN _____

K.2 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS). (MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, *Small Business Program Representations*, of this solicitation.] The offeror represents that it ☐ is a women-owned business concern.

K.3 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS. (MAR 1996)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.4 52.215-6 PLACE OF PERFORMANCE. (OCT 1997)

- (a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ____ intends, ____ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.
- (b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

PLACE OF PERFORMANCE
(STREET ADDRESS, CITY,
STATE, COUNTY, ZIP CODE)

TIME AND ADDRESS OF OWNER
AND OPERATOR OF THE PLANT
OR FACILITY IF OTHER THAN
OFFEROR OR RESPONDENT

K.5 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS. (MAY 1999) ALTERNATE II (NOV 1999)

- (a) (1) The standard industrial classification (SIC) code for this acquisition is 7381.
- (2) The small business size standard is not more than \$9 million gross revenue per year for the last three years.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) Representations.
 - (1) The offeror represents as part of its offer that it [] is, [] is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents, for general statistical purposes, as part of its offer that it () is, () is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) (Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.) The offeror represents as part of its offer that it [] is, [] is not a women-owned small business concern.

(5) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- _____ Black American.
- _____ Hispanic American.
- _____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- _____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- _____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- _____ Individual/concern, other than one of the preceding.

(c) Definitions.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Woman-owned small business concern," as used in this provision, means a small business concern -

- (1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall -

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.6 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)

- (a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

K.7 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS. (FEB 1999)

The offeror represents that -

- (a) It () has, () has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It () has, () has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.8 52.222-25 AFFIRMATIVE ACTION COMPLIANCE. (APR 1984)

The offeror represents that -

- (a) It ___ has developed and has on file, ___ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- (b) It ___ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.9 52.223-1 CLEAN AIR AND WATER CERTIFICATION. (APR 1984)

The Offeror certifies that -

- (a) Any facility to be used in the performance of this proposed contract is ___ is not ___ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;
- (b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

K.10 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (OCT 1996)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that -

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *(Check each block that is applicable.)*

___ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

___ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

___ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

___ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in section 19.102 of the Federal Acquisition Regulation; or

___ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

K.11 COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS (JUNE 1999)

(a) The Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS-100 report required by the Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has [], has not [] submitted the most recent report required by 38 U.S.C. 4212(d).

(b) An Offeror who checks "has not" may not be awarded a contract until the required reports are filed. (31 U.S.C. 1354)

K.12 SIGNATURE/CERTIFICATION (MAR 1999)

By signing below, the offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

_____	_____
Signature of the Officer or Employee Responsible for the Offer	Date of Execution

Typed Name and Title of the Officer or Employee
Responsible for the Offer

Name and Address of Organization:

Solicitation Number:_____

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR QUOTERS

L.1 CONSECUTIVE NUMBERING (JAN 1999)

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

L.2 CONTENT OF RESULTING CONTRACT (NOV 1998)

Any contract awarded as a result of this RFP will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Documents, Exhibits and Other Attachments (excluding those attachments including in this RFP relating to submission of proposals). Blank areas appearing in these sections, indicated by "[TBD]" will be completed prior to contract award.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations per FAR 52.215-1.

L.3 TIME, DATE AND PLACE PROPOSALS ARE DUE (MAR 1999)

The date and time for submission of proposals shall be **NO LATER THAN April 05, 2000, 4:00 p.m.**, local prevailing time at the place designated for receipt of proposals. (See the proposal submission instructions, including the provision describing treatment of late submissions, modifications, and withdrawals of proposals.)

Proposal Submission by U.S. Mail

Proposals must be received at the following mailing address:

U. S. Department of Energy
National Energy Technology Laboratory
ATTN: Kaye Bloniarz-Cook
P O Box 880, Mailstop 107
Morgantown, WV 26507-0880

Proposal Submission by Other than U.S. Mail

Offerors electing to submit proposals by means other than the U.S. Mail, including commercial courier service, assume the full responsibility of insuring that proposals are received at the following hand-carry address by the date and time specified above:

U.S. Department of Energy
National Energy Technology Laboratory
3610 Collins Ferry Road
Morgantown, WV 26507-0880

Such proposals must be closed and sealed as if for mailing.

External Marking of Proposals

Proposals shall be marked with the following information:

- (1) Address of Proposer

- (2) Solicitation Number
- (3) Due Time and Date of Proposals

L.4 NUMBER OF AWARDS (NOV 1997)

It is anticipated that there will be one (1) award resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

L.5 52.215-1 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION. (NOV 1999)

- (a) Definitions. As used in this provision -

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing or written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

- (b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).
- (c) Submission, modification, revision, and withdrawal of proposals.
 - (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.
 - (2) The first page of the proposal must show -
 - (i) The solicitation number;
 - (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
 - (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
 - (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.
- (3) Submission, modification, revision, and withdrawal of proposals.
- (i) Offerors are responsible for submitting proposals, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.
 - (ii) (A) Any proposal, modification, revision, or withdrawal received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--
 - (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
 - (2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
 - (B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
 - (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

- (5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.
- (6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
- (7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
- (8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.
- (d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).
- (e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall -
 - (1) Mark the title page with the following legend: **This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of - or in connection with - the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and**
 - (2) Mark each sheet of data it wishes to restrict with the following legend: **Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.**
- (f) Contract award.
 - (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.
 - (2) The Government may reject any or all proposals if such action is in the Government's interest.
 - (3) The Government may waive informalities and minor irregularities in proposals received.
 - (4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.
 - (5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

- (6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.
- (9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.
- (10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (11) The Government may disclose the following information in postaward debriefings to other offerors:
 - (i) The overall evaluated cost or price and technical rating of the successful offeror;
 - (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
 - (iii) A summary of the rationale for award; and
 - (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

L.6 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of a fixed price contract resulting from this solicitation.

L.7 FALSE STATEMENTS (NOV 1997)

Proposals must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

L.8 EXPENSES RELATED TO OFFEROR SUBMISSIONS (FEB 1998)

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

L.9 ALTERNATE PROPOSAL INFORMATION - NONE (NOV 1997)

Alternate proposals are not solicited, are not desired, and shall not be evaluated.

L.10 AMENDMENT OF THE SOLICITATION (MAR 1999)

The only method by which any term of this solicitation may be modified is by an express, formal amendment to the solicitation generated by the issuing office. No other communication made at any scheduled preproposal conference or subsequent discussions, whether oral or in writing, will modify or supersede the terms of this

solicitation. All amendments to this RFP will be posted on the NETL Homepage at "http://www.netl.doe.gov/business/solicit". Receipt of an amendment to a solicitation by an offeror must be acknowledged and received prior to the hour and date specified for receipt of offers.

L.11 CLASSIFIED MATERIAL - NONE (NOV 1997)

Performance under the proposed contract is not anticipated to involve access to classified material.

L.12 PREPROPOSAL CONFERENCE IS PLANNED (AUG 1999)

A preproposal conference will be held as indicated below:

TIME: 1:30pm
DATE: March 22, 2000
PLACE: NETL, Morgantown, WV (map included in Attachment A, Exhibit II)

TIME: 1:30pm
DATE: March 23, 2000
PLACE: NETL, Pittsburgh, PA (map included in Attachment A, Exhibit III)

Please limit attendance to two (2) people per organization.

Technical and contracting personnel will be available to discuss requirements and answer questions. Offerors are urged to and expected to inspect the sites where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance to the extent the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

Note: Travel associated with the site visits are at the complete expense of the offeror. Preregistration is required.

L.13 SMALL BUSINESS SIZE STANDARD AND SET-ASIDE INFORMATION (MAY 1999)

This acquisition is set-aside for 7381.

L.14 PROPOSAL PREPARATION INSTRUCTIONS -- GENERAL (MAR 1999)

To aid in evaluation, proposals shall be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered, and identified with the name of the offeror, the date, and the solicitation number to the extent practicable.

The proposal is to clearly and fully demonstrate the offeror's capability, knowledge, experience, and expertise with regard to the requirements described herein. Simply stating that the offeror understands and will comply with technical and management requirements is not adequate. Similarly, phrases such as "standard procedures will be employed" or "well-known techniques will be used" are also inadequate.

Overall Arrangement of Proposal

The overall proposal shall consist of three (3) physically separate volumes, individually entitled as stated below. The required number of each proposal volume is shown below.

PROPOSAL VOLUME -- TITLE	ORIGINAL	COPIES	PAGE LIMITATION
Volume I -- Offer and Other Documents	1	2	None
Volume II -- Technical Proposal	1	2	25
Volume III -- Price Proposal	1	2	None

The text of each proposal volume shall be typed, single-spaced, using Elite size (or equivalent, such as times-roman, courier, or arial), 12 pitch type (or equivalent), and printed, unreduced on size 8 1/2-inch by 11-inch paper. For interpretation of page limitation guidelines, the front and back of a single sheet are counted as two pages. Illustrations shall be legible and no longer than 11-inch by 17-inch fold-outs, as appropriate for the subject matter. Each 11-inch by 17-inch fold-out is considered two pages when determining the number of pages. Pages of each volume shall be sequentially numbered with the volume and page numbers on each page. Except as otherwise noted in the solicitation, the page guidelines set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any proposal by reference as a means to circumvent the page limitation.

Offerors are not to provide proposal information in three-ring binders.

L.15 PREPARATION INSTRUCTIONS: VOLUME I - OFFER AND OTHER DOCUMENTS (MAR 1999)

Volume I, Offer and Other Documents, consists of the actual offer to enter into a contract to perform the desired work, other documents requiring the signature of the offeror's authorized representative and its capability to perform the work.

FORMAT AND CONTENT

Volume I, Offer and Other Documents, shall include the following documents (in the order listed):

- 1. The SF33 Form -- Solicitation, Offer and Award (Page 1 of this solicitation) and Section B.1 (Pages 2-4)**
 - (a) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, and sign in block 17. The SF33 is to be fully executed, including the acknowledgment of amendments, if applicable, and signed by an authorized individual of the proposing organization. **Two signed originals shall be included.**
 - (b) The offeror's Acceptance Period (See Block 12) entered shall not be less than 60 days.
 - (c) Signature Authority. The person signing the SF33 must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects.
 - (d) Price fill-ins in B.1 for the base and option periods must be completed.
 - (e) Key personnel in H.6 must be completed.

2. Offeror Representations and Certifications Fully Executed

Offeror Representations and Certifications included under Section K of this solicitation are to be fully executed and a copy included in each copy of Volume I, Offer and Other Documents. **As stated in Section K, should an offeror be selected for further negotiations, he must certify to the certifications referenced.**

3. Exceptions and Deviations

The offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the model contract, Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II -- Technical Proposal and Volume III -- Price Proposal. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing benefit to the Government, however, may result in rejection of your proposal(s) as unacceptable. Offerors who object to review of their proposal by persons other than Government employees shall so state in this Volume I. Again, offerors are cautioned that DOE may be unable to give full consideration to proposals which indicate that only Government evaluation is authorized.

L.16 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER. (JUN 1999)

- (a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.
- (b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:
 - (1) Company name.
 - (2) Company address.
 - (3) Company telephone number.
 - (4) Line of business.
 - (5) Chief executive officer/key manager.
 - (6) Date the company was started.
 - (7) Number of people employed by the company.
 - (8) Company affiliation.
- (c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

L.17 PREPARATION INSTRUCTIONS: VOLUME II TECHNICAL PROPOSAL (JULY 1999)

Volume II - Technical Proposal will be used to assess both the merit of the proposed work and its relevance to both DOE's current programmatic objectives and the objectives of this solicitation (see Attachment A). The technical proposal must be self-contained and written in a clear and concise manner. The proposal shall be definitive with respect to the service which the offeror actually proposes to conduct. If the proposal is selected for comprehensive evaluation, the criteria specified in Section M shall be applied.

The maximum number of pages for the Technical Proposal shall be limited to **25**, 8 x 11 inch single-sided sheets. The page count shall exclude the front and back cover, Cover Sheet, Public Abstract, Table of Contents, and Resumes.

To ensure that the technical proposal is evaluated strictly on its own merit, no cost information shall be included.

FORMAT AND CONTENT

Volume II - Technical Proposal is to be composed of the following elements in the order designated below:

1. Cover Sheet. A completed and signed cover sheet as per FAR 52.215 shall be used. The title of the proposed effort should be concise and descriptive of the work to be performed.
2. Public Abstract. A concise abstract of no more than one (1) typewritten page clearly stating the objectives of the proposed objectives and the overall plan shall be included. The abstract is to provide an overview of the proposed objectives. This abstract may be released to the public by DOE in whole or in part at anytime. It is therefore required that no proprietary data or confidential business information be included.

Table of Contents. Proposals shall include a table of contents to facilitate locating the elements of the proposal.

Technical Discussion. This section shall contain the major portion of the Technical Proposal. It shall be presented in as much detail as practical and include the following elements: (1) Management Approach, (2) Past Experience and Performance, and (3) Organizational Approach. ***Note: It is critical that the offeror's Technical Discussion clearly address each 'element' cited herein; these elements are structured to correlate one-to-one with the evaluation criterion given in Section M of this solicitation. Failure to comprehensively address any element can adversely impact the favorable evaluation of your technical proposal.***

Element 1. Management Approach

Offerors must provide a comprehensive discussion of how this service will be managed to accomplish its objectives and ensure its success. This discussion must explain the offeror's approach for directing and coordinating all resources necessary (teaming partners, 8(a)s, and subcontractors) to accomplish the statement of work objectives. The offeror must ensure he has the ability to maintain a regional office with authority, in which there is a person designated in writing by the contractor to have complete authority to act for the contractor during the term of the contract. A detailed discussion of the local office which has the authority to assign/remove contractor personnel, submit reports, perform inspections, authorize corrective actions and shall be the primary point of contact for the Government shall be provided. A discussion which establishes the feasibility of a smooth transition between the current incumbent and the new contractor, with minimal impact to the Government shall be provided. A realistic timeframe for accomplishment should be clearly established. Offerors shall clearly identify issues associated with the transition, define plans to mitigate or resolve those issues, and discuss the anticipated likelihood of successful resolution.

The offeror shall provide an estimate in table format of labor hours required for each option. In addition, the offeror shall include a table showing labor hours for any proposed subcontracting or consulting efforts for each option and indicate the extent to which the offeror has previously worked with the proposed consultant or subcontractor. The offeror shall explain the purpose of the subcontract or consulting effort.

Any travel required by the offeror under the proposed effort should be provided in tabular format. The number, duration, destination, and purpose (with justification) of trips shall be provided by the offeror and any proposed subcontractors and consultants. **No pricing information shall be included in the Technical Proposal.**

Element 2. Past Experience and Performance

In accordance with the requirements of FAR 15.305(a)(2) the offeror shall discuss any existing and/or prior experience in managing projects that were similar in type, size, and/or complexity. The offeror shall especially note experience working in similar conditions expected at the federal sites, problems encountered at those sites, and any corrective actions taken to resolve those problems. The discussion shall also detail the method for attracting and retaining a well qualified workforce in performing and completing security services of comparable complexity and scope as addressed in the Statement of Work. Training related to these specific conditions should also be clearly stated. Experience gained within the last five years is considered highly relevant. This experience and performance record shall demonstrate the extent, relevance, and merit of the offeror's hands-on experience in successfully performing and completing contracts of comparable complexity and scope as addressed in the statement of work. Experiences of proposed key personnel are germane. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts for all key personnel and previous companies the entity may have been involved with. This list should include name of contracting activity, contract number, contract type, total contract value, contract work, and point of contact with telephone number.

Element 3. Organizational Approach

The offeror shall describe the organizational structure and the lines of authority and the relationship to the proposed service. This discussion shall detail the offeror's system for management and tracking and managing the work in progress. The offeror shall describe the structure, function, and individual responsibilities of the proposed service. The offeror shall include detailed information for a trained, qualified workforce and show adequate work distribution, allocation of skills, and assignment approach for core resources within the offeror's proposed work breakdown structure. The offeror shall describe in detail their ability to ensure full utilization of workforce and other resources to respond to changing needs from both daily and annual perspectives. The offeror shall provide a contract manager with overall responsibility for on-site contract operations. The offeror shall provide detailed information to ensure a workforce with specific security experience, qualifications, capabilities, and training, a bonded workforce, or the ability of the workforce to be 235 certified, as appropriate. The offeror shall demonstrate the ability to provide adequate staff at both NETL site locations (i.e., Morgantown, West Virginia and Pittsburgh, Pennsylvania). A discussion that demonstrates the offeror's ability to expeditiously replace personnel (e.g., filling vacancies) as necessary, with individuals of comparable quality, and the ability to adjust staffing levels in order to respond to changing priorities and/or program funding levels must be provided. The offeror shall also discuss how effective communication and responsiveness between and within the onsite organization; the roles, responsibilities, and authorities of on-site personnel, and how responsibilities and authorities will be delegated throughout the organization.

L.18 PREPARATION INSTRUCTIONS: VOLUME III - PRICE PROPOSAL

- A. Format and Content. Volume III - Price Proposal shall consist of the offeror's prices to perform the desired work as set forth in the SOW. Section B, Article B.1 provides unit prices and extensions for performing various segments of the SOW. To assist offerors in calculating full cost recovery, a checklist is provided below. This checklist includes items typically considered by offerors in developing a firm fixed priced proposal. The list may not be all inclusive and it is the offeror's responsibility to ascertain that all elements of cost are captured in the offeror's fixed price. Take care that all elements of cost and fee are accounted for in the calculation of the prices set forth in Section B, Article B.1. The checklist may be used for both sites; however, there are costs unique to each site which must be taken into consideration.

- ___ Direct Labor
- ___ Monthly Meetings
- ___ Required Training

- Vacation
- Personal Days
- Holidays
- Health & Welfare Benefits
- Employer Taxes including:
 - FICA
 - FUTA
 - SUTA
 - Worker's Comp
- Overhead
- Other Direct Costs including:
 - Uniforms
 - Nongovernment provided training
- G&A Rate
- Contract Fee
- Subcontracted Services
- Handling Fee

B. Also, the background figures that constitute the loaded hourly rate(s) for effort required above the core service are requested (see Section B.1, Paragraphs 3 and 6 for example). Only the loaded rate(s) and not the background will be contained in the resultant contract. For proposal evaluation purposes, it will be estimated that 100 hours of effort will be authorized for payment from the pool.

L.19 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS. (JUN 1999)

- (a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer -
- (1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and
 - (2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.
- (b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.
- (c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.
- (d) (1) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.
- (2) The [insert name of SBA's contractor] will notify the [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

L.20 52.219-22 SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)

- (a) General. This provision is used to assess an offeror's small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR 52.219-1, Small Business Program Representation.
- (b) Representations.
 - (1) General. The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either--
 - (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and
 - (A) No material change in disadvantaged ownership and control has occurred since its certification;
 - (B) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or
 - (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.
 - (2) For Joint Ventures. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: []
- (c) Penalties and Remedies. Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall:
 - (1) Be punished by imposition of a fine, imprisonment, or both;
 - (2) Be subject to administrative remedies, including suspension and debarment; and
 - (3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

L.21 52.219-25 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--

- (a) Disadvantaged status for joint venture partners, team members, and subcontractors. This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR 52.219-22, Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern, is identified as a certified small disadvantaged business in the database maintained by the Small

Business Administration (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

- (b) Reporting requirement. If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312, Small Disadvantaged Business Participation Report, or in the Contractor's own format providing the same information. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, reports may be submitted with the final Subcontracting Report for Individual Contracts (Standard Form 294) at the completion of the contract.

L.22 52.237-1 SITE VISIT. (APR 1984)

- (a) Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

L.23 INFORMATION OF AWARD (NOV 1997)

Written notice to unsuccessful offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

L.24 DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS (FEB 1998)

Drawings, specifications, and other documents supplied with the solicitation may be retained by the offeror (unless there is a requirement for a document to be completed and returned as a part of the offer). Offeror's Proposals will not be returned (except for timely withdrawals).

L.25 952.233-2 SERVICE OF PROTEST. (APR 1995)

- (c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585 Fax: (202) 586-4546.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 GENERAL (MAR 1998)

Proposals will be evaluated in accordance with applicable DOE acquisition policies and procedures and the criteria set forth in the solicitation.

Award will be made to that responsible offeror, whose offer, conforming to this solicitation, provides the best value to the Government, considering the Evaluation Criteria in this Section M. The Government reserves the right to award to other than the lowest priced offeror if the perceived benefits of the higher priced proposal merits the additional cost.

M.2 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA (NOV 1997)

The technical proposal and price are of approximately equal importance.

M.3 EVALUATION CRITERIA - SUPPORT SERVICES (SEB) (NOV 1997)

The following criteria will be used to evaluate the reasonableness, completeness, merit and relevance of the offeror's Technical Proposal to successfully perform the solicitation requirements.

A. MANAGEMENT APPROACH (40)

The offeror shall ensure the ability to maintain a regional office with authority, in which there is a person designated in writing by the contractor to have complete authority to act for the contractor during the term of the contract. The local office shall have the authority to assign/remove contractor personnel, submit reports, perform inspections, authorize corrective actions and shall be the primary point of contact for the Government. The offeror shall demonstrate the ability to provide a smooth transition between the current incumbent and the new contractor, with minimal impact to the Government. The offeror shall demonstrate experience with emergency planning and response. If no experience exists, the offeror shall demonstrate the ability to respond and assist in emergency situations.

B. PAST EXPERIENCE AND PERFORMANCE (35)

Offerors will be evaluated on their performance under existing and prior contracts for similar services. The offeror shall demonstrate relevant experience and an adequate past performance record. This experience and performance record shall demonstrate the extent, relevance, and merit of the offeror's hands-on experience in successfully attracting and retaining a well qualified workforce, and performing and completing security services of comparable complexity and scope as addressed in the Statement of Work. In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror will be given a neutral rating and will not be evaluated favorably or unfavorably on past performance.

C. ORGANIZATIONAL APPROACH (25)

The offeror shall provide a trained, qualified workforce and show adequate work distribution, allocation of skills, and assignment approach for core resources within the offeror's proposed work breakdown structure. The offeror shall demonstrate the ability, based on past and current experiences, to ensure full utilization of workforce and other resources to respond to changing needs from both daily and annual perspectives. The offeror shall provide a contract manager with overall responsibility for on-site contract operations. The offeror shall ensure a workforce with specific security experience, qualifications, capabilities, and training. The offeror

shall ensure a bonded workforce, or the ability of the workforce to be 235 certified, as appropriate. The offeror shall demonstrate the ability to provide adequate staff at both NETL site locations (i.e., Morgantown, West Virginia and Pittsburgh, Pennsylvania). The offeror shall demonstrate ability to expeditiously replace personnel (e.g., filling vacancies) as necessary, with individuals of comparable quality, and the ability to adjust staffing levels in order to respond to changing priorities and/or program funding levels. The offeror shall demonstrate effective communication and responsiveness between and within the onsite organization; the roles, responsibilities, and authorities of on-site personnel, and how responsibilities and authorities will be delegated throughout the organization.

M.4 PRICE EVALUATION

Price will not be point scored but will be evaluated to determine the best value to the Government.

M.5 52.217-5 EVALUATION OF OPTIONS. (JUL 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).